83-595

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

KENNETH R. SNOW, ROY HULL and GUY SANSOM,

Petitioners,

v.

QUINAULT INDIAN NATION, a/k/a QUINAULT TRIBE; QUINAULT TRIBAL COUNCIL; and EDYTH E. CHENOIS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Questions Presented

I. Does tribal jurisdiction extend to the original territorial boundaries of the reservation and include the power to tax a nonmember's activities on land owned in fee by that nonmember absent any other relationship between the nonmember's activities and the tribe?

II. Does 25 U.S.C. § 1302(8), which provides that "No Indian tribe in exercising the power of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws . . . ." create a viable remedy in federal courts for non-Indians burdened by a discriminatory tribal tax?

III. Do Fifth Amendment guarantees prohibit a federal delegation of power to Indian tribes which permits imposition of a discriminatory tribal tax on non-Indians?

Parties Below

Appellants in the Court below were Kenneth R. Snow, Roy Hull, Tim Adams, Guy J. Sansom, Floyd E. Davis, Larry F. Rasmussen, George Bertrand and Ronald P. Erickson.

Appellees were the Quinault Indian Nation, a/k/a Quinault Tribe, the Quinault Tribal Council, and the tribal revenue clerk, Edyth E. Chenois.

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TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Petitioners respectfully pray that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 7, 1983.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 709 F.2d 1319, and is reproduced as Appendix A hereto. The Findings of Fact, Conclusions of Law, and Order on Summary Judgment, entered by the District Court for the Western District of Washington on September 29, 1980, are not reported, and are reproduced as Appendix B hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on July 7, 1983. This Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS INVOLVED

Involved are: (1) United States Constitution, Amendment V (Appendix C hereto); (2) the Indian Civil Rights

Act, 82 Stat. 77, 25 U.S.C. secs. 1301-1303 (Appendix D); (3) the General Allotment Act of 1887, 24 Stat. 388, as amended, 25 U.S.C. sec. 331 et. seq. (Appendices E and F); (4) the Quinault Allotment Act of 1911, 36 Stat. 1345 (Appendix G); (5) the Treaty of Olympia, 12 Stat. 971 (1855) (Appendix H); (6) the Executive Order of Nov. 4, 1873, 1 Kapp. 923 (Appendix I); (7) the Quinault Tribal Constitution (1975) (Appendix J); (8) Title 40, Quinault Tribal Code, Business License Ordinance (Appendix K); (9) the Rules under Quinault Tribal Code, Title 40 (1977) (Appendix L).

STATEMENT OF THE CASE

The Quinault Indian Reservation is located on the west side of the Olympic Peninsula, which forms the northwest portion of the State of Washington. The reservation was originally created by

the Treaty of Olympia, 12 Stat. 971 (1855), and was subsequently expanded to its present boundaries by the Executive Order of November 4, 1983, 1 Kapp. 923. The Quinault Indian Nation is a federally recognized Indian Tribe.[1]

The Tribe's reservation encompasses about 200,000 acres, consisting mostly of forest land. See, United States v. Mitchell, ____ U.S. ____ (1983), 51 L.W. 4999, 5000. By 1935, the entire Reservation had been allotted, under the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. §§ 331, et seq., into trust allotments, "most of which were 80 acres of heavily timbered lands." Id.

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[1]The History of the reservation is set forth in Halbert v. United States, 283 U.S. 753 (1931).

About a third of the Reservation has gone out of trust. Id.[2]

The Reservation is triangular in shape, with the base running roughly north and south for about twenty miles along the Pacific Coast, and the apex located about twenty miles due east of the Coast. Just inside this apex is the unincorporated community of Amanda Park. Petitioners are non-Indians who reside and conduct their businesses there, all on non-Indian lands which they own in fee. According to 1980 census data, Amanda Park has a population of 198 non-Indians and 26 Indians. (See Attachment C to Tribe's Brief in Court of Appeals) Running through Amanda Park

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[2]Although the entire Reservation was allotted, it appears that the Tribe subsequently acquired about 4000 acres. See, Mitchell v. United States, 219 Ct. Cl. 95, 591 F.2d 1300 (1979).

is U.S. Highway 101, the principal highway around the Olympic Peninsula, serving federal, state, other public, and non-Indian land as well as the Quinault Reservation.

The Petitioners own and operate various types of businesses in Amanda Park; Mr. Snow has a general store; Mr. Hull a cafe and tavern; and Mr. Sansom a service station. The businesses cater to the residents of Amanda Park and visitors to the area. The businesses have no formal or informal arrangements with the Tribe, but occasionally render services to individual tribal members on an incidental basis. Almost all business conducted by Petitioners is with non-Indians. Although the Tribe alleges that it provides various services and benefits to Petitioners, it has not established any direct relationship

between itself and Petitioners, nor a direct rendition of services to Petitioners.[3]

The Constitution of the Quinault Indian Nation asserts the sovereignty of the Tribe extends to ". . . all persons acting within the boundary of [the original reservation as created by treaty] . . . ." Article I, Section 1. In June 1977 the Quinault Tribal Council adopted a business license tax ordinance, applicable to all of Petitioners' businesses, pursuant to this sweeping assertion of sovereignty. The amount of the tax was multiplied by the number of the

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[3]For many years Petitioners have in fact received all services from Grays Harbor County and the State of Washington, including police and fire protection, and maintenance of state and local roads. The Tribe does not keep fire-fighting road equipment in or around Amanda Park -- the closest repository is some 25 miles away in Queets.

business's employees, if such business had two or more employees. Not all employees, however, counted equally; an employee who was a member of the Quinault Tribe counted at one rate while a non-member employee counted at double that rate.[4]

The Petitioners challenged the Tribe's attempt to impose the tax on several grounds, including, inter alia, the following: First, Petitioners contended that the Tribe was without the jurisdiction to tax nonmembers conducting business on non-Indian owned fee lands unless there was a significant involvement or consensual relationship between the Tribe and the nonmembers.

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[4]Thus, an employer of four tribal members would pay half the tax paid by an employer of four non-Indians. Mr. Snow has four non-Indian employees, including his wife. See App. L.

Second, Petitioners contended that the tax in question violated the equal protection guarantees of the Indian Civil Rights Act. Petitioners also contended that the imposition of the tax upon them, without affording them the right to participate in the tribal government, violated their rights under the United States Constitution.

The District Court considered Petitioners' challenge and the motion to dismiss which had been initiated by the Tribe as cross-motions for summary judgment. After considering evidence introduced by both parties, including contradictory affidavits as to the relationship between the Petitioners and the Tribe and the services it rendered, the District Court ruled in favor of the Tribe.

Upon appeal the Ninth Circuit affirmed. The Court below rejected Petitioners' claim that the Tribe lacked the jurisdiction to impose any tax upon them in the absence of the requisite relationship with the tribe based on its reading of this Court's decision in Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982).[5] In disposing of Petitioners' claim that the tribal tax violated the equal protection guarantees of 25 U.S.C. § 1302(8), the Court below

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[5]The court below cast its holding in terms of tribal sovereign immunity from suit. That is, it viewed tribal sovereign immunity as barring the Petitioners' claim if imposition of the tax upon them was within the Tribe's power, and as not barring the claim if the tax was not within the Tribe's power. Thus, its application of the doctrine of tribal sovereign immunity was really a ruling on the scope of tribal taxing power. See App. A, p. A-4. Because of the nature of its holding, the Court below did not remand for a resolution of the conflicting evidence of the relationship between the Petitioners and the Tribe.

held that the only relief available in federal courts for an alleged violation of the Indian Civil Rights Act, even for non-Indians, is that of habeas corpus pursuant to 25 U.S.C. § 1303. In so holding, the Court below relied upon Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), as well as its own prior decisions construing that case.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT BELOW DEPARTS FROM THE ESTABLISHED HOLDINGS OF THIS COURT, RESULTING IN THE DENIAL OF PETITIONERS' CIVIL RIGHTS.

This Court, particularly over the past few years, has carefully endeavored to define the often delicate balance between an Indian tribe's sovereignty and its dependent status. The Court below has misinterpreted this Court's work, thereby granting overly broad tribal jurisdiction, denying petitioners a

remedy by which to vindicate their constitutional and federal rights, and creating the opportunity for further abuse of the power erroneously granted to Indian tribal governments.

A. Limitations on Tribal Civil Jurisdiction Over Non-Indians on Non-Indian Owned Fee Land Constitute An Issue of Nationwide Importance That Must be Resolved by This Court.

This Court has consistently recognized that an Indian tribe's jurisdiction over nonmembers is limited:

> . . . the Indian tribes have lost "any right of governing every person within their limits except themselves." [Fletcher v. Peck, Cranch 87, at 147], Oliphant v. Suquamish Indian Tribe, . . . 435 U.S. at 209. Although Oliphant only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.

Montana v. United States, 450 U.S. 544, 565 (1981) (emphasis supplied, footnote omitted).

The Court below has chosen to ignore these well-settled principles. See, United States v. Wheeler, 435 U.S. 313 (1978), Oliphant v. Suquamish Indian Tribe, supra, 435 U.S. 191 (1978), Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980), and Montana v. United States, supra, 450 U.S. 544. Although the Court below bases its opinion on this Court's decision in Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982) (Stevens, J., Burger, CJ., and Rehnquist, J., dissenting), in fact its reading of Merrion is abberrational and results in an irresponsible and drastic departure from the principles set forth by this Court in Merrion and its predecessors.

The delineation of the jurisdictional relationship between a tribe and a nonmember has recently been the sub-

ject of increasing clarification by this Court. In United States v. Wheeler, supra, 435 U.S. 313, this Court upheld the power of a tribe to punish tribal members who violate tribal laws, but at the same time was careful to note that the Indian tribes have lost many of the attributes of sovereignty, particularly in areas involving the relations between an Indian tribe and nonmembers. In Oliphant v. Suquamish Indian Tribe, supra, 435 U.S. 191, this Court held that tribes are without criminal jurisdiction over nonmembers. In Washington v. Confederated Tribes of Colville, supra, 447 U.S. 134, this Court noted that tribes have a "broad measure of civil jurisdiction over the activities of non-Indians on Indian reservation lands in which the tribes have a significant interest. . . ." and thus upheld the tribe's right to impose a tax

on transactions involving sales by tribal members on tribal lands. Id. at 152 (emphasis added).[6] And in Montana v. United States, supra, 450 U.S. 544, citing both Oliphant and Colville, supra, this Court held that the tribe did not have authority to regulate non-Indian hunting and fishing on non-Indian-owned fee lands lying within the exterior boundaries of the reservation. In so doing this Court explained the limits of a tribe's extension of civil jurisdiction to nonmembers:

> A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.

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[6]This Court's holdings in Colville and Oliphant indicate that economic impact on a tribe, even where significant, does not constitute the requisite "significant interest."

Montana, 450 U.S. at 565. Tribal jurisdiction may also be extended to the conduct of a nonmember on fee lands:

> A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Id., at 566.

In Merrion v. Jicarilla Apache Tribe, supra, 455 U.S. 130, this Court merely applied these principles to the activities of oil and gas lessees on tribal lands pursuant to a contractual relationship with the tribe. The activities of the lessees took place on tribal lands, were governed by the terms of the contract with the tribe, and the lessees were found to have received the benefits and services of tribal government. In such cases, a tribe's juris-

diction is clear, and was accordingly so held by this Court.

Incredibly, the Court below misinterpreted the Merrion decision, eliminating the limitations this Court has previously placed on tribal jurisdiction, and giving the Quinault Tribe carte blanche power to tax any activity within the original exterior boundaries of the reservation. Not only has the Court below considered Merrion in a vacuum, it has disregarded the factual underpinnings of that case and the well-reasoned opinion of this Court. Instead the Court below relies on selected statements taken out of context:

> ...[the tribe's power to tax] "derives from the tribe's general authority, as sovereign, to control economic activity" on the reservation....
>
> * * *
>
> ...The fact that the tax is levied against businesses, many of which

are non-Indian owned and located within reservation boundaries, does not make the tax one which is outside the boundaries of the Tribe's sovereign powers.

The distorted result that follows from such treatment is untenable and must be corrected by this Court.[7]

B. Allowing the Tribe Unrestricted Power to Tax Petitioners Runs Contrary to the Policies of the General Allotment Act.

The decision of the Court below also disregards federal law and policy by which Petitioners originally were invited to take title to the land.

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[7]The District Court's opinion apparently follows the guidelines set forth by this Court. However, its decision cannot stand. The issues raised by each side were treated by the District Court as cross-motions for summary judgment. Snow v. Quinault Indian Nation, see, Appendix B, at A-13. Yet despite conflicting evidence of the relationship between the Tribe and Petitioners, the District Court granted respondents' motion. The Ninth Circuit avoids this procedural issue by giving the Tribe the right to tax nonmembers regardless of underlying facts.

Petitioners hold title to their lands in fee pursuant to the General Allotment Act (Act of Feb. 8, 1887, Ch. 119, § 6, 24 Stat. 390, as amended, Act of May 8, 1906, Ch. 2348, 34 Stat. 182, 25 U.S.C. §349). This Act was designed eventually to eliminate tribal relations by providing that

> ". . . when the lands have been conveyed to the Indians by patent in fee, . . . then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside, ..."

Id. Accordingly this Court has noted:

> There is simply no suggestion in the legislative history that Congress intended that non-Indians who would settle upon alienated allotted lands would be subject to tribal regulatory authority. Indeed, throughout the Congressional debates, allotment of Indian land was consistently equated with the dissolution of tribal affairs and jurisdiction. [Citations omitted.] It defies common sense to suppose that Congress would intend that non-Indians purchasing allotted lands would become subject to tribal jurisdiction when

> an avowed purpose of the allotment policy was the ultimate destruction of tribal government.

Montana v. United States, supra, 450 U.S. at 559, n.9. Although the policy of allotment was later repudiated, ". . . what is relevant in this case is the effect of the land alienation occasioned by that policy on Indian treaty rights tied to Indian use and occupation of reservation land." Id.

C. The Decision of the Court Below Extends Jurisdiction on the Mistaken Assumption That a Tribe's "Inherent Sovereign Powers" Are Derived from Concepts of Territoriality.

The decision of the Court below threatens to extend a tribe's "inherent sovereign powers" to the original territorial boundaries of "Indian Country." In so doing, the Court below confuses the true basis of tribal sovereignty by misapplying notions derived from Anglo-American theories of property rights.

As this Court has pointed out, one must avoid "reliance on platonic notions of Indian sovereignty. . . ." McClanahan v. Arizona Tax Commission, 411 U.S. 164, 172 (1973)

> The Indian sovereignty doctrine is relevant . . . not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read.

Id.

"Sovereignty" is not a legal right unto itself, but a concept useful in describing a political reality from which legal consequences may flow. It is the consent of the governed to be so, together with their recognition of the governing institution - whether it takes the form of a monarch, elected assembly or council of elders - as the ultimate source of law in the society in which they live. Courts neither grant nor

take away sovereignty; if and when the governed no longer recognize the particular institution as their ultimate source of law, nothing a court may say would secure sovereign power to an institution no longer respected. Courts may only use the concept of sovereignty as a backdrop for the basis of their decisions.

Tribes are not "sovereign" in the true sense of that term as being the sole and ultimate source of law which is not itself bound by law. The term "sovereignty" in the context of Indian tribal government ". . .means no more than within the will of Congress." United States v. Blackfeet Tribe of Blackfeet Indian Reservation, 365 F. Supp. 192 (D. Mont. 1978); see also, Oliphant v. Suquamish Indian Tribe, supra, 435 U.S. at 208-211; Santa Clara

Pueblo v. Martinez, supra, 436 U.S. at 56.

Consider: The nature of an Indian tribe is that of a social group composed of numerous families, clans, bands, or villages who are held to descend from a common ancestor and possess cultural, religious, and linguistic homogeneity. A nation-state, in contrast, is a politically organized territory which may or may not have the homogeneity characteristic of a tribe. Territoriality is the prevailing determinant of which sovereign controls in the case of a nation-state, whereas the primary determinant in the case of a tribe is the personal status and relationship of the individual to the tribe. Tribal sovereignty is personal, not territorial. As stated by the Solicitor General, when faced with the question of whether an Indian court

could exercise jurisdiction over acts committed by an Indian on lands within the reservation but no longer held in trust:

> That the original sovereignty of an Indian Tribe extended to the punishment of a member by the proper Tribal officers for depredations or other forms of misconduct committed outside the territory of the tribe cannot be challenged. Certainly, we cannot read into the laws and customs of Indian Tribes a principle of territoriality of jurisdiction with which they were totally unfamiliar, and which no country has adopted as an absolute rule.

Opinion of the Solicitor for the Department of the Interior, April 27, 1939.

The consequences of the distinction between personally and territorially defined sovereignty focus on <u>who</u> is subject to tribal power, rather than on defining what that power includes. Thus, it has been held that a tribe may punish its members for offenses committed outside the territorial bounda-

ries of the reservation, Settler v. Lameer, 507 F.2d 231 (9th Cir. 1974), but may not punish nonmembers who commit crimes against members on reservation lands. Oliphant v. Suquamish Tribe, supra, 435 U.S. 191.

Concepts of sovereignty based on personal relationships and the policies of the General Allotment Act combine to reinforce this Court's conclusions that tribal jurisdiction over nonmembers must be based on something more than a nonmember's fee patent ownership of lands located within the original boundaries of a reservation. The territorial assertions relied on by the Court below are flatly inconsistent with this Court's holding in Montana v. United States, supra, 450 U.S. 544. The Court below ignores the articulated principles of Oliphant, Montana, Colville and

Merrion, creating problems that must be resolved by this Court.

II. THE DECISION OF THE COURT BELOW STANDS IN DIRECT CONFLICT WITH THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS IN DRY CREEK LODGE, INC. V. ARAPAHOE AND SHOSHONE TRIBES AND RAISES ISSUES OF FEDERAL LAW AND CONSTITUTIONAL GUARANTEES THAT MUST BE RESOLVED BY THIS COURT.

A. The Decision of the Court Below Improperly Limits Non-Indians Subjected to a Discriminatory Tribal Tax to the Remedy of Habeas Corpus.

This Court has determined that the policies underlying the Indian Civil Rights Act require that for tribal members involved in internal tribal matters, the only remedy afforded in federal courts for violations of the Act is that of habeas corpus. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) (White, J., dissenting).

With its decision, the Court below subjects petitioners to the jurisdiction

of tribal government and effectively eliminates all avenues of federal redress otherwise guaranteed nonmembers. Without examining the different policy considerations that must apply to nonmembers, the Court below has extended the holding of Santa Clara to cover situations involving not only nonmembers, but issues unrelated to the types of internal tribal matters that concerned this Court in Santa Clara. The Court below held that

> In Santa Clara . . ., the United States Supreme Court specifically held "that §1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." Santa Clara, 436 U.S. at 72. In so ruling, the Supreme Court foreclosed any reading of the ICRA as authority for bringing civil actions in federal court to request other forms of relief. The tribal court is the proper forum for "the exclusive adjudication of disputes affecting . . . interests of both Indians and non-Indians." Santa Clara, 436 U.S. at 65.

In contrast the Tenth Circuit has examined the necessity of providing a federal remedy to nonmembers whose rights have been violated by actions of a tribe unrelated to internal tribal matters. Dry Creek Lodge, Inc. v. Arapahoe and Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980), cert. den. 449 U.S. 1118 (1981). The Tenth Circuit recognized that in Santa Clara

> The issue and control was on the basis of ownership, tribal membership, and tribal use of its own lands. The problem was thus strictly an internal one between tribal members and the tribal government relating to the policy of the Tribe as to its membership. Of course, there were no non-Indians concerned.
>
> . . . Much emphasis was placed in the [Santa Clara] opinion on the availability of tribal courts and, of course, on the intratribal nature of the problem sought to be resolved. With reliance on the internal relief available the Court in Santa Clara places the limitations on the Indian Civil Rights Act as a source of a remedy. But in the absence of such other relief or

remedy the reason for the limitations disappears.

The reason for the limitations and the references to tribal immunity also disappear when the issue relates to a matter outside of internal tribal affairs and when it concerns an issue with a non-Indian."

Dry Creek Lodge, supra, at 685 (emphasis added).

The decision of the Court below stands in contrast to the opinion of the Tenth Circuit and places in issue the question of remedies available to non-Indians under the Indian Civil Rights Act. Resolution of this conflict is necessary to ensure that the rights and remedies guaranteed to non-Indians remain unimpaired by extending tribal jurisdiction.

B. The Decision of the Court Below Undermines the Policies of the Indian Civil Rights Act and Permits Discriminatory Taxation.

The Indian Civil Rights Act was intended to secure the broad constitu-

tional rights afforded to litigants appearing before federal and state courts to litigants appearing before Indian tribal courts, and to protect individuals subject to their jurisdiction from the injustices perpetrated by tribal governments. Santa Clara, supra at 61, 66; S. Rep. No. 841, 90th Cong., 1st Sess. 5-6 (1967); Summary Report of Hearings and Investigations pursuant to S. Res. 194, 89th Cong., 2d Sess., 12 (Comm. Print 1966), at 11. To the extent that tribal governments have jurisdiction over non-members, the ICRA also protects their rights. Pursuant to the Act, § 1302 provides

> No Indian tribe in exercising powers of self-government shall -
>
> * * *
>
> (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

The Quinault tax, on its face and in its operation, violates petitioners' ICRA rights; it is a particularly onerous example of discriminatory treatment. The tax is assessed on a per-employee/per-activity basis, established at a base rate for employees who are members of the Tribe, but doubled for nonmember employees. The inequity of this system becomes more apparent when the potential for further abuse is considered: what is to keep the Tribe from imposing the tax on nonmembers at four or five or ten times the base rate -- or not to tax members at all?[8]

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[8]For instance, although "most of its lands are valuable primarily for their timber resources" (Tribe's Brief to the Ninth Circuit), the Tribe does not tax extracting activities on trust lands. Having effectively exempted tribal members engaged in such activities, the tax burden is left to fall on nonmembers on fee patent lands.

In a case such as this, where a tribe is seeking to apply a discriminatory tax to a nonmember conducting business on fee patent land, and where there is no significant involvement or consensual relationship between the nonmember and the tribe, the remedy of habeas corpus is not sufficient to secure protection against discriminatory taxation and some other relief for the nonmember must be made available. Consider the following:

First, federal and constitutional policies, as interpreted by this Court, require that

> . . . where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust remedies so as to grant the necessary relief. Bell v. Hood, 327 U.S. [678], at 684.

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 338, 392 (1971).

Second, an express purpose of the ICRA is to promote tribal self-government. Santa Clara, supra, 436 U.S. at 59, 62.[9] However, in this case the limitations on remedies imposed by the Court below defeat this stated purpose. The tribal court is being asked to exercise its judgment on complex legal issues without the benefit of appropriate training and experience; this is unfair to both the court and the litigants before it. Decisions rendered by a tribunal without sufficient expertise generally face a greater potential for reversal by a higher court. In turn, the lower tribunal's ability to rule with confidence

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[9]In support of this purpose this Court held that in intratribal matters where the expertise of a tribal court is indispensable, and its authority should not be undermined, limiting relief to habeas corpus is appropriate. Santa Clara Pueblo v. Martinez, supra, 436 U.S. 49.

is damaged, and it loses the respect of those that appear before it.[10]

Third, and most significantly, the decision of the court below leaves both the tribal court and the nonmember litigants before it without a remedy. Under consideration is the case of a nonmember, presumably subject to the civil jurisdiction of the tribal court, but involved in issues unrelated to internal tribal affairs, and indeed, not involved with the tribe on any significant level. If remedy under the ICRA is limited to habeas corpus, the nonmember is put in the extraordinary position of having to get himself arrested in order to have a remedy available. Yet as this Court

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[10]Although respondents may contend, and perhaps rightfully so, that the tribal court in question is in fact quite competent, as a practical matter, this tribal court is more the exception than the rule. See, Oliphant v. Suquamish Tribe, supra, 435 US at 211-212.

noted in Montana, under the holding of Oliphant v. Suquamish Indian Tribe, supra, 435 U.S. 191, the tribe would be without the authority to enforce criminal penalties against the nonmember. Montana v. United States, supra, 450 U.S. at 565, n.14. The nonmember is left without any remedy. Equally important is the dilemma faced by the tribal court: it is hampered in its ability to enforce its decision against the nonmember.[11] This result cannot have been

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[11]Title 40, the Business License Ordinance, provides that the tribe may revoke the license of any "taxpayer" who has failed to pay the required fees or taxes, or failed to comply with any other provisions of the Ordinance. ¶40.10. Upon conviction for violation or failure to comply with the provisions of the Ordinance, a non-Indian "shall be punished by eviction from the reservation premises ...." ¶40.11. The effectiveness of these means of enforcement is questionable at best. Certainly the tribe has no power to evict a landowner from his fee patent land.

intended by the drafters of the Indian Civil Rights Act or the Santa Clara opinion. This Court must determine how a nonmember's constitutional rights are best guaranteed and the policies underlying the Indian Civil Rights Act are best served when tribal jurisdiction is extended to nonmembers.

III. THE GUARANTEES OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION PROHIBIT THE CONGRESS FROM AUTHORIZING OR ALLOWING AN INDIAN TRIBE TO IMPOSE THE VERY TAX MADE PERMISSIBLE BY THE DECISION OF THE COURT BELOW.

Although the federal Constitution does not apply directly to Indian Tribes, it certainly applies to actions of the federal government itself, including those of the Congress. Further, the relationship between the federal government and the federally recognized Indian Tribes is, we submit, even closer than the relationship

between the governmental body and its lessee in Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). The federal government is even more implicated in the actions of Indian tribes than was the public parking authority in the discriminatory actions of its lessee in Burton.

The constitutional problem here stems from two facts. The Petitioners here are reservation residents, but are not tribal members. Accordingly, they cannot participate in the tribal government to which they are subject, either through the ballot box or through any other means. Secondly, the taxing power here asserted by the Tribe is but one aspect or facet of a much more general assertion of governmental power. As stated in Article I, § 1 of the Quinault Constitution, which is entitled "Sover-

eignty," ". . . the jurisdiction and governmental power of the Quinault Nation shall extend to: . . .all persons acting within the [reservation] boundaries. . . ." Similarly the court below stated that the taxing power "'derives from the tribe's general authority, as sovereign, to control economic activity' on the reservation . . ." App. A, p. A-6, quoting from Merrion, 455 U.S. at 137.

As shown by the various opinions in Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60 (1978), the broader the assertion of governmental power, the more serious becomes the fundamental constitutional problem of insuring the legitimacy of that power. When government asserts its power over those who cannot participate in that government through the ballot box, such assertion

becomes unconstitutional, as a denial of equal protection and a deprivation of property without due process of law. The decision of the Court below endorses this constitutionally impermissible assertion of power.

CONCLUSION

In recent years this Court has addressed and resolved major issues regarding the powers of Indian Tribes over those who live or do business on their reservations. The issues presented in this case are no less important than the issues previously addressed, and indeed must be resolved by this Court in order to clarify the scope of its prior decisions. Not just important questions of Indian law, but important questions of basic civil rights are not involved as well. The basic civil rights of non-Indian reser-

vation residents, such as the Petitioners, and the unfettered tribal governmental power here asserted over them, simply cannot co-exist.

Accordingly, the Petition for a Writ of Certiorari to Review the Decision of the Court of Appeals for the Ninth Circuit should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KENNETH R. SNOW, ROY HULL, TIM ADAMS, GUY J. SANSOM, FLOYD E. DAVIS, LARRY F. RASMUSSON, GEORGE BERTRAND, RONALD P. ERICKSON, and all others similarly situated, Plaintiffs-Appellants v. QUINAULT INDIAN NATION, a/k/a QUINAULT TRIBE, QUINAULT TRIBAL COUNCIL, and EDYTH E. CHENOIS, Defendants-Appellees.	No. 81-3042 D.C. No. C 77-138-T OPINION

Appeal from the United States District Court
for the Western District of Washington
Jack E. Tanner, District Judge, presiding
Argued and submitted January 6, 1982
Resubmitted March 21, 1983

Before: ANDERSON and ALARCON, Circuit Judges, and REDDEN*, District Judge

ALARCON, Circuit Judge:

*James A. Redden, United States District Judge for the District of Oregon, sitting by designation.

Kenneth R. Snow (Snow) appeals from an order of the district court granting summary judgment in favor of the Quinault Indian Tribe (the Tribe). Snow raises the following issues on appeal: (1) The district court has jurisdiction to entertain Snow's claim against the Quinault Nation; (2) The Tribe does not have the power to impose the business tax in question; and (3) The tax imposed by the Tribe denies Snow equal protection under the law in violation of 25 U.S.C. § 1302(8)

I. FACTUAL BACKGROUND

Snow and other non-Indian business owners, whose businesses are located on fee lands within the Quinault Reservation, commenced this action against the Tribe seeking injunctive and declaratory relief as well as extensive monetary damages. At issue is the Tribe's proposed implementation of a business license fee and tax on business activities within the Reservation. The Tribe seeks to raise revenue for the support of tribal governmental services through this tax. The tax is to be imposed on Indian and non-Indian businesses alike and is calculated by multiplying a base tax rate figure times the number of

non-Indian employees and adding that figure to one-half the base rate times the number of Indian employees.

Following the initiation of Snow's action, the Tribe moved the district court to dismiss for failure to state a claim upon which relief can be granted. Shortly thereafter, Snow moved for summary judgment. The district court determined that no genuine dispute as to any material fact existed and granted summary judgment in favor of the Tribe. Upon the district court's denial of Snow's motion for reconsideration, this appeal followed.

II. SUBJECT MATTER JURISDICTION

The district court correctly determined that the claim set forth sufficient facts to give it subject matter jurisdiction pursuant to 28 U.S.C. § 1331. This section gives the district court jurisdiction over "civil actions arising under the Constitution, laws or treaties of the United States." See Cardin v. De La Cruz, 671 F.2d 363, 365 (9th Cir.), cert. denied, ___ U.S. ___, 103 S.Ct. 293 (1982).

At the core of Snow's claim is the extent to which an Indian tribe in exercising inherent sovereign authority can assert

civil jurisdiction over non-Indians. The limits of tribal sovereignty have been the subject of considerable litigation in recent years. Increasingly, the legal boundaries of tribal sovereignty are being defined by case law. See, e.g., Montana v. United States, 450 U.S. 544 (1981) (Supreme Court limited the extent to which the Crow Tribe could regulate non-Indian hunting and fishing on non-Indian reservation fee lands.); Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) (Indian tribal courts do not have inherent criminal jurisdiction to try and punish non-Indians). Federal question jurisdiction can be based on case law. Illinois v. City of Milwaukee, 406 U.S. 91, 99-100 (1972). As Snow's action raises the issue of tribal sovereign powers, a sufficient federal question is presented upon which to base § 1331 jurisdiction. See Cardin, 671 F.2d at 365.

III. TRIBAL SOVEREIGN IMMUNITY

The dispositive issue before this court is whether tribal sovereign immunity bars Snow's action from being addressed in the federal district court.

The Tribe contends that Snow's suit

must be dismissed on the basis of sovereign immunity. We agree. That Indian tribes possess immunity from suit in state or federal courts has long been settled. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978). In addition, tribal immunity extends to tribal officials acting in their representative capacity and within the scope of their authority. United States v. Oregon, 657 F.2d 1009, 1012 n.8 (9th Cir. 1981). However, tribal sovereign immunity is not absolute. Rather, immunity from suit is similar to other aspects of tribal sovereign powers. Immunity exists only at the sufferance of Congress and is subject to complete defeasance. United States v. Wheeler, 435 U.S. 313, 323 (1978); United States v. Oregon, 657 F.2d at 1013. A tribe may also waive its immunity to suit. Id. An expression of waiver must be unequivocal; waiver cannot be implied. Santa Clara Pueblo v. Martinez, 436 U.S. at 58. However, tribal immunity is not a bar to actions which allege conduct that is determined to be outside the scope of a tribe's sovereign powers.1/ Swift Transportation Inc. v. John, 546 F. Supp. 1185, 1188 (D. Ariz. 1982).

The Quinault Tribe has not consented to be sued or waived sovereign immunity in this action; nor has the Tribe been divested of its immunity by Congress. Therefore, if the enactment and implementation of a business tax is within Tribal sovereign powers, Snow's action is barred. Accordingly, we next examine the Tribe's inherent power to tax.

In Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982), the Supreme Court held: "[t]he power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenues for its essential services." Id. at 137. The Court further stated that this power "derives from the tribe's general authority, as sovereign, to control economic activity" on the reservation as well as "to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction." Id.

The Merrion decision cites with approval Buster v. Wright, 135 F. 947 (8th

Cir. 1905), appeal dismissed, 203 U.S. 599 (1906), an early decision upholding tribal power to tax non-Indians. The Merrion court states that "[e]ven though the ownership of land and the creation of local governments by non-Indians established their legitimate presence on Indian land, the [Buster] court held that the Tribe retained its power to tax." Merrion at 143.

The Quinault business license fee and tax at issue in this appeal are aimed at raising revenue to support Tribal government services. The fact that the tax is levied against businesses, many of which are non-Indian owned and located within reservation boundaries, does not make the tax one which is outside the boundaries of the Tribe's sovereign powers. The holding in Merrion makes clear that the Quinault tax is a valid exercise of inherent sovereignty. Consequently the Tribe retains sovereign immunity from suit in this action.

Appellant Snow contends, however, that sovereign immunity was waived when Edith Chenois (Chenois), the Tribe's Revenue Clerk, consented to service of process as a

defendant in the district court.

Chenois was joined as a party to this action in her official capacity as Tribal Revenue Clerk. There has been no allegation that Chenois exceeded the scope of her authority. As tribal immunity extends to tribal officers acting in their official capacity and within the scope of their authority, United States v. Oregon, 657 F.2d at 1012 n.8, Snow cannot now avoid the doctrine of sovereign immunity by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity. See Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682 (1949).

The issue then becomes whether a tribal officer's acceptance of service affects the sovereign immunity of the Tribe. The Supreme Court stated in United States v. United States Fidelity Co., 309 U.S. 506 (1940):

> It is a corollary to immunity from suit on the part of the United States and the Indian Nations in tutelage that [their] immunity cannot be waived by officials. If the contrary were true, it would subject the Government

> to suit in any court in the discretion of its responsible officers. This is not permissible.

Id. at 513.

We find that the actions of Chenois do not affect the sovereign immunity of the Tribe. The Tribe has not waived sovereign immunity in this matter. Therefore sovereign immunity operates to bar Snow's action in the district court.

IV. JURISDICTION TO HEAR CLAIMS UNDER THE INDIAN CIVIL RIGHTS ACT

Snow contends that the manner in which the Tribal business tax is to be implemented denies equal protection of the laws in violation of the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302(8).2/ Specifically, Snow claims that taxing employers at a lower rate for employing Indians rather than non-Indians, is discriminatory.

Ninth Circuit law is well settled regarding claims under the ICRA. The only express remedial provision available to a party seeking relief in federal courts for an alleged violation of the ICRA is through application for habeas corpus relief under 25 U.S.C. § 1303. Boe v. Fort Belknap Indian Community of Fort Belknap,

642 F.2d 276, 278-79 (9th Cir. 1981); Trans-Canada Enterprises, Ltd. v. Muckleshoot Indian Tribe, 634 F.2d 474, 476 (9th Cir. 1980).

In Santa Clara Pueblo v. Martinez, the United States Supreme Court specifically held "that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." Santa Clara, 436 U.S. at 72. In so ruling, the Supreme Court foreclosed any reading of the ICRA as authority for bringing civil actions in federal court to request other forms of relief. The tribal court is the proper forum for "the exclusive adjudication of disputes affecting . . .interests of both Indians and non-Indians." Santa Clara, 436 U.S. at 65.

The Supreme Court in Santa Clara acknowledged the dual objective that Congress had in enacting the ICRA. Congress sought to strengthen the position of individual indians with respect to the tribe, as well as "promote the well-established federal 'policy of furthering Indian self-government'." Santa Clara, 436 U.S. at 62 (quoting Morton v. Mancari,

417 U.S. 535, 551 (1974). Although Congress can specifically authorize civil actions to be brought in federal court for alleged violations of § 1302, no such authorization has been granted by Congress in this instance. Therefore the parties must petition the Indian tribal court for relief under the ICRA.

Snow has not submitted his ICRA denial of equal protection claim to the Quinault tribal court for adjudication. He cannot now avoid the tribal court by claiming that the district court properly has jurisdiction over this ICRA claim. Congress intended tribal courts to decide ICRA claims which affect interests of both Indians and non-Indians in the first instance, subject to habeas corpus review.

The district court acted properly in granting summary judgement.

AFFIRMED.

FOOTNOTES

1/ As stated, Tribal sovereign powers are subject to defeasance by Congress. Tribal conduct may also be beyond the scope of sovereign powers, if sovereignty is restricted by treaty provisions, United States v. Wheeler, 435 U.S. 313, 323-24 (1978), or by portions of the Constitution

found "explicitly binding" on the tribes. Trans-Canada Enterprises, Ltd. v. Muckleshoot Indian Tribe, 634 F.2d 474, 476-77 (9th Cir. 1980). In addition, Indian tribes have been specifically divested of some attributes of sovereignty due to their dependent status. See, e.g., Montana v. United States, 450 U.S. 544 (1981); Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

2/ 25 U.S.C. § 1302(8) provides in pertinent part as follows:

> No Indian tribe in exercising the power of self-government shall -
>
> (8) deny to any person within its jurisdiction the equal protection of its laws. . . .

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

KENNETH SNOW, et al.	)
	) CIVIL ACTION
v.	) FILE NO.
	) C77-138T
QUINAULT INDIAN NATION, et al.,	)
	) JUDGMENT

This action came on for Consideration before the Court, Honorable JACK E. TANNER, United States District Judge, presiding, and the issues having been duly Considered and a decision having been duly rendered,

It is Ordered and Adjudged that Defendant's motion for Summary Judgment is GRANTED.

DATED at Tacoma, WA., this 29th day of September, 1980.

BRUCE RIFKIN
Clerk of Court

/s/ Debby Harrison
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH SNOW, ET AL., Plaintiffs,	)	NO. C77-138T
v.	)	
QUINAULT INDIAN NATION, Defendants.	)	ORDER

THIS MATTER comes on for consideration before the undersigned judge of the above-entitled court upon Plaintiff's Motions to Alter or Amend Judgment and For Oral Argument. Having considered the aforesaid motions, together with the moving party's memoranda and affidavits, Defendant's memoranda in opposition, and the entirety of the records and files herein, the Plaintiff's Motions are DENIED.

The clerk of the court is instructed to send uncertified copies of this Order to all counsel of record.

Dated this 24th day of December, 1980.

/s/ Jack E. Tanner
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH SNOW, et al., Plaintiffs, v. QUINAULT INDIAN NATION, et al., Defendants.	No. C77-138T FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF SUMMARY JUDGMENT

Plaintiffs, several non-Indians and an Indian, seek a ruling that they are immune to the Quinault Indian Nation's business license and tax. Plaintiffs originally commenced this action against the Quinault Indian Nation, which has raised the defense of sovereign immunity. The Court does not reach this issue as jurisdiction does exist over the Defendant Edythe Chenois, Quinault Revenue Clerk, who was impleaded as a Defendant with the consent of the parties. With this modification, the Court finds that it has jurisdiction over the parties and the subject matter. This case is presented on Plaintiffs' motion for summary judgment, and Defendant's motion to dismiss for failure to state a claim on which relief can be granted, which is treated as a motion for summary judgment in view of the affidavits (sic) and other

documents submitted by both parties. F.R.C.P. 12(b). The Court has considered the briefs and cases cited by the parties and makes the following findings of fact, conclusions of law, and order.

All of the Plaintiffs do business within the Quinault Reservation. Several of the Plaintiffs do business on fee land within tourist community located adjacent to Lake Quinault. Both the Lake and Amanda Park are within the Reservation's boundaries. Two other Plaintiffs engage in the practice of law within the boundaries of the Reservation and at least one of them seeks to appear in the Quinault Tribal Court.

The tribal business license and tax, Title 40 of the Quinault Tribal Code, is imposed on both Indians and non-Indians for the privilege of doing business within the Quinault Reservation. See Quinault Constitution, Article V, Section 3(c). In addition to the $5 annual license fee, a tax is imposed on persons and entities doing business within the Reservation, measured by the number of persons employed in the business within the Reservation, measured by the number of persons employed in the business within the Reservation's boundaries. In order to encourage busi-

nesses to employ Indians, the tax due for any employee is reduced by one-half the base rate if the employee is an enrolled member of an Indian tribe.

The Quinault Reservation is composed of approximately 190,000 acres. About two-thirds of the Reservation remains in trust. The remaining one-third has passed out of trust. Most non-trust lands are owned by timber companies as the primary economic value of most of these lands is in their timber resource. The Quinault Department of Natural Resources and Economic Development provides a fire watch, fire fighting equipment and personnel to fight forest fires for both fee and trust lands and exercises regulatory control over forest practices that can damage timber and fish resources. Economic analyses show that more than ninety-five percent of the jobs and dollar value on the Reservation are generated by wood harvesting and processing. Affidavit of Warren Shale, Appendix E to Defendants Memorandum Opposing Both Amendment of Complaint and Substitution of Documents. The tribal police department provides a trespass patrol protecting against the theft of

timber on fee and trust lands. Appendix G, affidavit of Wilson Wells.

The tribal government provides police, fire, ambulance, social services, television relay, building inspection and alcohol counseling, among other services. With the exception of certain social services, these tribal government programs are delivered without regard to whether the recipient is Indian or non-Indian, and without regard to whether the land is in fee or trust status. Affidavits of Alice James, Appendix F, and Wilson Wells, Appendix G.

The Quinault Nation also manages Lake Quinault to provide recreational opportunities for Indians and non-Indians alike, consistent with the preservation and protection of the natural beauty and serenity of the Lake and its natural resources. To this end, the Quinault Nation currently authorizes and regulates boating activities on the Lake. Those regulations impose limitations on the speed and hours of operation of boats on the Lake. The purpose of these regulations is to enhance the attraction of the Lake and to protect visitors.

The tribe also regulates fishing on the Lake through the Quinault Fish and Game Commission with the assistance of tribal biologists and fishing staff. Except during conservation closures to protect certain salmon stocks, the Quinault Nation has authorized non-members to obtain a tribal fishing permit to fish on Lake Quinault. Tribal fishing permits have been available to tourists at the Amanda Park Mercantile operated by Plaintiff Snow. Amanda Park is a tourist community adjacent to Lake Quinault. As part of its fisheries program, the tribal government operates a salmon and steelhead pen rearing enhancement facility on Lake Quinault. The project regularly hires high school students from Amanda Park and surrounding areas. Project vehicles are fueled and serviced at businesses in Amanda Park, and the tribe maintains an account with Plaintiff Snow's Mercantile to purchase general items for the project. Official and unofficial visitors are attracted to the Lake Quinault area by the pen rearing facility itself. Efforts have been made by the Tribe to ensure that a high level of water quality is maintained in Lake Quin-

ault. The tribal government has engaged in discussions with federal authorities to provide for a sewer project along the Lake's south shore to replace existing drain fields and the tribe was instrumental in stopping the dumping of raw sewage into the Lake by a major resort on the South Shore. Affidavit of Oliver Mason, Tribal Vice-Chairman.

Funding for these services is derived from federal grants, tribal taxes, and appropriations from earnings of tribal government business enterprises. Federal funding is cumbersome, unreliable, and inflexible. Appropriations from tribal businesses for governmental programs has deprived these enterprises of the ability to expand at their potential rate and has made them more vulnerable to market fluctuations in the erratic wood and seafood markets.

The tribal government realizes the need to establish a reliable revenue base for the delivery of government services and to reduce dependence on unreliable federal funding. Such efforts must focus on commerce generated by the Reservation's resources. Property taxes imposed by many

other governments are of limited value on the Reservation, since the United States owns most of the Reservation's land. Affidavit of Alice James.

Plaintiff Snow claims that he and other non-Indians receive no tribal government services and that services are provided to them by the county and state, by whom they are also taxed. The purpose of a motion for summary judgment is to pierce the allegations to the facts. The issue in this case is not whether Plaintiffs pay state taxes and receive state services. The record establishes that the Plaintiffs do business within the Quinault Reservation and that the tribal government provides services which are available and of benefit to Plaintiffs and others doing business within the Reservation's boundaries. Wisconson v. J.C. Penny Co., 311 U.S. 435, 444-46 (1940), rehearing denied, 312 U.S. 712 (1941).

The Supreme Court's recent decision in Washington v. Confederated Tribes of the Colville Indian Reservation, 100 S. Ct. 2069 (1980), makes it clear that Indian tribes have the power to impose the tax challenged in this case. "Federal Courts

also have acknowledged tribal power to tax non-Indians entering the reservation to engage in economic activity." Id. at 2081. In reaching this conclusion, the Court specifically distinguished the holding of Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978). Although Plaintiffs advance the argument that Oliphant should be expanded, the decision in Colville underscores the point that the holding in Oliphant is expressly limited to the issue of criminal jurisdiction. 435 U.S. at 196 n.7. As Colville shows, Indian tribes have retained jurisdiction in civil matters over both Indians and non-Indians within their reservations. See White Mountain Apache Tribe v. Bracker, 100 S. Ct. 2578 (1980); Merrion v. Jicarilla Apache Tribe, 617 F. 2d 537 (10th Cir. 1980); Shoshone and Arapahoe Tribes v. Knight, No. C79-267B (D. Wyo. June 27, 1980).

Plaintiffs argue that Colville must be read to recognize tribal civil jurisdiction only on Indian trust lands, not on fee patented lands. This argument must be rejected because the authorities relied upon by the Court in Colville themselves dealt with tribal civil jurisdiction, in

some cases taxing jurisdiction, on both fee and trust land. 100 S. Ct. at 2081.

Plaintiffs have argued that the tax in this case is discriminatory. The tribal forum for the adjudication of such claims is exclusive both for Indians and non-Indians. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

Plaintiffs' reliance on Trans-Canada Enterprises, Ltd. v. Muchleshoot Indian Tribe, No. C77-882M (W.D. Wash. 1978), and Cardin v. DeLaCruz, No. C79-1184M (W.D. Wash. 1980), is not well placed. In each of these cases, the district court expanded the limited holding of Oliphant so as to preclude the exercise of tribal civil jurisdiction over non-Indians. In neither of those cases did the district court have the benefit of the Supreme Court's decision in Colville, which holds that Oliphant cannot be expanded to the issue of civil jurisdiction.

In view of the foregoing, Defendant's motion for summary judgment is granted.

Dated this 27th day of September, 1980.

/s/ Jack E. Tanner
UNITED STATES DISTRICT JUDGE

Approved as to form:

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 709 F.2d 1319, and is reproduced as Appendix A hereto. The Findings of Fact, Conclusions of Law, and Order on Summary Judgment, entered by the District Court on September 29, 1980, are not reported, and are reproduced as Appendix B hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on July 7, 1983. This Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

Involved are: (1) United States

APPENDIX C

UNITED STATES CONSTITUTION

AMENDMENT V - CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX D

Indian Civil Rights Act

§ 1301. Definitions

For purposes of this subchapter, the term --

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court" means any Indian tribal court or court of Indian offense.

§ 1302. Constitutional rights.

No Indian tribe in exercising powers of self-government shall --

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their per-

sons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law: or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

APPENDIX E

24 Stat. 388

CHAP. 119. - An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon

in quantifies as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: Provided, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: And provided further, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservations,

shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: And provided further, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

SEC. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: Provided, That if any one entitled to an allotment shall fail to make a selection within four

years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which election shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

Sec. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

SEC. 4. That where any Indian not residing upon a reservation, or for whose

tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General

Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

SEC. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allocated, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made

touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: Provided, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: And provided further, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time

to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: Provided however, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: And provided further, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the

same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied,

on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employes [sic] in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments

shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

SEC. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and

no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

SEC. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

SEC. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

SEC. 10. That nothing in this act

contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

SEC. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Approved, February 8, 1887.

APPENDIX F

GENERAL ALLOTMENT ACT

25 U.S.C. 331 *et seq.*

§ 331. Allotments on reservations; irrigable and nonirrigable lands

In all cases where any tribe or band of Indians has been or shall be located upon any reservation created for their use by treaty stipulation, Act of Congress, or Executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian. And whenever it shall appear to the President that lands on any Indian reservation subject to allotment by authority of law have been or may be brought within any irrigation project, he may cause allot-

ments of such irrigable lands to be made to the Indians entitled thereto in such areas as may be for their best interest, not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of nonirrigable agricultural land and four times the number of acres of nonirrigable grazing land: Provided, That the remaining area to which any Indian may be entitled under existing law after he shall have received his proportion of irrigable land on the basis of equalization herein established may be allotted to him from nonirrigable agricultural or grazing lands: Provided further, That where a treaty or Act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty or Act, subject, however, to the basis of equalization between irrigable and nonirrigable lands established herein, but in such cases allotments may be made in quantity as specified herein,

with the consent of the Indians expressed in such manner as the President in his discretion may require.

§ 332. Selection of allotments

All allotments set apart under the provisions of sections 331-334, 339, 341, 342, 348, 349 and 381 of this title shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under said sections: Provided, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the

Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

§ 333. Making of allotments by agents

The allotments provided for in sections 331-334, 339, 341, 342, 348, 349 and 381 of this title, shall be made by special agents appointed by the President for such purpose, and the superintendents or agents in charge of the respective reservations on which the allotments are directed to be made, or, in the discretion of the Secretary of the Interior, such allotments may be made by the superintendent or agent in charge of such reservation, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such special allotting agents, superintendents, or agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the

Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the Bureau of Land Management.

§ 334. Allotments to Indians not residing on reservations

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in sections 331-334, 339, 341, 342, 348, 349 and 381 of this title for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 348

and 349 of this title. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Secretary of the Interior or such officer as he may designate, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

§ 335. Extension of provisions as to allotments

Unless otherwise specifically provided, the provisions of sections 331-334, 339, 341, 342, 348, 349, and 381 of this title are extended to all lands heretofore purchased or which may be purchased by authority of Congress for the use or benefit of any individual Indian or band or tribe of Indians.

§ 336. Allotments to Indians making settlement

Where any Indian entitled to allotment under existing laws shall make

settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on the public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of nonirrigable agricultural land or one hundred sixty acres of nonirrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in sections 348 and 349 of this title. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general

laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Secretary of the Interior or such officer as he may designate, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

§ 337. Allotments in national forests

The Secretary of the Interior is authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements in land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether

the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of the Interior shall cause allotment to be made as herein provided.

§ 337a. San Juan County, Utah; discontinuance of allotments

No further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

§ 338. Repealed. May 29, 1928, c. 901, § 1(64), 45 Stat. 991

§ 339. Tribes excepted from certain provisions

The provision of sections 331-334, 341, 342, 348, 349, and 381 of this title shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in Oklahoma, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska

adjoining the Sioux Nation on the south added by Executive order.

§ 340. Extension of certain provisions

The provisions of sections 331-334, 349, 341, 342, 348, 349, and 381 of this title, are declared to extend to and are made applicable to the Confederated Wea, Peoria, Kaskaskia, and Piankeshaw tribes of Indians, and the Western Maimi tribe of Indians, located in the northeastern part of the Indian Territory and to their reservation, in the same manner and to the same extent as if said tribes had not been excepted from the provisions of said sections, except and as otherwise on and after March 2, 1889, provided.

§ 341. Power to grant rights-of-way not affected

Nothing in sections 331-334, 339, 342, 348, 349, and 381 of this title shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making

just compensation.

§ 342. Removal of Southern Utes to new reservation

Nothing in sections 331-334, 339, 341, 348, 349, and 381 of this title, shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

§ 343. Correction of errors in allotments and patents

In all cases where it shall appear that a double allotment of land has been wrongfully or erroneously made by the Secretary of the Interior to any Indian by an assumed name or otherwise, or where a mistake has been made in the description of the land inserted in any patent, said Secretary is authorized and directed, during the time that the United States may hold the title to the land in trust for any such Indian, and for which a conditional patent may have been issued, to rectify and correct such mistakes and cancel any patent which may

have been thus erroneously and wrongfully issued whenever in his opinion the same ought to be canceled for error in the issue thereof, and if possession of the original patent can not be obtained, such cancellation shall be effective if made upon the records of the Bureau of Land Management; and no proclamation shall be necessary to open to settlement the lands to which such an erroneous allotment patent has been canceled, provided such lands would otherwise be subject to entry: And provided, That such lands shall not be open to settlement for sixty days after such cancellation: And further provided, That no conditional patent that has been or that may be executed in favor of any Indian allottee, excepting in cases hereinbefore authorized, and excepting in cases where the conditional patent is relinquished by the patentee or his heirs to take another allotment, shall be subject to cancellation without authority of Congress.

§ 344. Cancellation of allotment of unsuitable land

If any Indian of a tribe whose surplus lands have been ceded or opened to

disposal has received an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect.

§ 344a. Cancellation of patent issued to Indian allottee dying without heirs

The Secretary of the Interior is authorized to investigate the allotment in the name of any deceased Indian and if it be shown to his satisfaction that the allottee died without heirs he shall report the facts to Congress with a recommendation for the cancellation of the patent issued in the name of such

Indian.

§ 345. Actions for allotments

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of

any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands held August 15, 1894, by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: Provided, That the right of appeal shall be allowed to either party as in other cases.

§ 346. Proceedings in actions for allotments

The plaintiff shall cause a copy of his petition filed under section 345 of this title, to be served upon the United States attorney in the district wherein suit is brought, and shall mail a copy of same, by registered letter, to the Attorney General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the United States attorney upon whom service of petition is made as aforesaid to appear and defend

the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: Provided, That should the United States attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

§ 347. Limitations of actions for lands patented in severalty under treaties

In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of

lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not been brought within the time prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians.

§ 348. Patents to be held in trust; descent and partition

Upon the approval of the allotments provided for in sections 331-334 of this title, by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to

whom such allotment shall have been made, or, in case of his decease, of his he'rs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: Provided, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided: And provided further, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of

the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: Provided, however, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, sub-

ject to grants which Congress may make in aid of education: And provided further, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at 3 per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the Bureau of Land Management, and afterwards delivered, free of charge, to the allottee entitled thereto. And if any religious society or

other organization was occupying on February 8, 1887, any of the public lands to which sections 331-334, 339, 341, 342, 348, 349, and 381 of this title are applicable, for religious or educational work among the Indians, the Secretary of the Interior is authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by the aforementioned sections, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of the said sections and become citizens of the United States shall be preferred.

Provided further, That whenever the Secretary of the Interior shall be satisfied that any of the Indians of the

Siletz Indian Reservation, in the State of Oregon, fully capable of managing their own business affairs, and being of the age of twenty-one years or upward, shall, through inheritance or otherwise, become the owner of more than eighty acres of land upon said reservation, he shall cause patents to be issued to such Indian or Indians for all of such lands over and above the eighty acres thereof. Said patent or patents shall be issued for the least valuable portions of said lands, and the same shall be discharged of any trust and free of all charge, incumbrance, or restriction whatsoever, and the Secretary of the Interior is authorized and directed to ascertain, as soon as shall be practicable, whether any of said Indians of the Siletz Reservation should receive patents conveying in fee lands to them under the provisions of sections 331-334, 339, 341, 342, 348, 349, and 381 of this title.

§ 348 a. Same; extension of trust period for Indians of Klamath River Reservation

The period of trust on lands allotted to Indians of the Klamath River Reser-

vation, California, which expired July 31, 1919, and the legal title to which is still in the United States, is hereby reimposed and extended for a period of twenty-five years from July 31, 1919: Provided, That further extension of the period of trust may be made by the President in his discretion, as provided by section 348 and section 391 of this title.

§ 349 Patents in fee to allottees

At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348 of this title, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: Provided, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or

her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: Provided further, That until the issuance of fee-simple patents all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: And provided further, That the provisions of sections 331-334, 339, 341, 342, 349 and 381 of this title shall not extend to any Indians in the Indian Territory.

§ 350. Surrender of patent, and selection of other land

The Secretary of the Interior is authorized, in his discretion, and whenever for good and sufficient reason he shall consider it to be for the best interest of the Indians, in making allotments under sections 331-334, 339, 341, 342, 348, 349 and 381 of this title, to permit any Indian to whom a patent has been issued for land on the reservation

to which such Indian belongs, under treaty or existing law, to surrender such patent with formal relinquishment by such Indian to the United States of all his or her right, title, and interest in the land conveyed thereby, properly indorsed thereon, and to cancel such surrendered patent: Provided, That the Indian so surrendering the same shall make a selection, in lieu thereof, of other land and receive patent therefor, under the provisions of said sections.

§ 351. Patents with restrictions for lots in villages in Washington

The Secretary of the Interior is authorized, whenever in his opinion it shall be conducive to the best welfare and interest of the Indians living within any Indian village on any of the Indian reservations in the State of Washington, to issue a patent to each of said Indians for the village or town lot occupied by him, which patent shall contain restrictions against the alienation of the lot described therein to persons other than members of the tribe, except on approval of the Secretary of the Interior; and if any such Indian shall die subsequent to

June 25, 1910, and before receiving patent to the lot occupied by him, the lot to which such Indian would have been entitled if living shall be patented in his name and shall be disposed of as provided for in section 372 of this title.

§ 352. Cancellation of trust patents within power or reservoir sites

The Secretary of the Interior, after notice and hearing, is authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress: Provided, That any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or reservoir site may be set aside: Provided further, That any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the

area subject to irrigation by any such project.

§ 352a. Cancellation of patents in fee simple for allotments held in trust

The Secretary of the Interior is hereby authorized, in his discretion, to cancel any patent in fee simple issued to an Indian allottee or to his heirs before the end of the period of trust described in the original or trust patent issued to such allottee, or before the expiration of any extension of such period of trust by the President, where such patent in fee simple was issued without the consent or an application therefor by the allottee or by his heirs: Provided, That the patentee has not mortgaged or sold any part of the land described in such patent: Provided also, That upon cancellation of such patent in fee simple the land shall have the same status as though such fee patent had never been issued.

§ 352b. Same; partial cancellation; issuance of new trust patents

Where patents in fee have been issued for Indian allotments, during the trust period, without application by or consent

of the patentees, and such patentees or Indian heirs have sold a part of the land included in the patents, or have mortgaged the lands or any part thereof and such mortgages have been satisfied, such lands remaining undisposed of and without incumbrance by the patentees, or Indian heirs, may be given a trust patent status and the Secretary of the Interior is, on application of the allottee or his or her Indian heirs, hereby authorized, in his discretion, to cancel patents in fee so far as they cover such unsold lands not encumbered by mortgage, and to cause new trust patents to be issued therefor, to the allottees or their Indian heirs, of the form and legal effect as provided by sections 348 and 349 of this title, such patents to be effective from the date of the original trust patents, and the land shall be subject to any extensions of the trust made by Executive order on other allotments of members of the same tribe, and such lands shall have the same status as though such fee patents had never been issued: Provided, That this section and section 352a of this title shall not apply where any such lands have been sold

for unpaid taxes assessed after the date of a mortgage or deed executed by the patentee or his heirs, or sold in execution of a judgment for debt incurred after date of such mortgage or deed, and the period of redemption has expired.

§ 352c. Reimbursement of allottees or heirs for taxes paid on lands patented in fee before end of trust

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to reimburse Indian allottees, or Indian heirs or Indian devisees of allottees, for all taxes paid, including penalties and interest, on so much of their allotted land as have been patented in fee prior to the expiration of the period of trust without application by or consent of the patentee: Provided, That if the Indian allottee, or his or her Indian heirs or Indian devisees, have by their own act accepted such patent, no reimbursement shall be made for taxes paid, including penalties and interest, subsequent to acceptance of the patent: Provided further, That the fact of such

acceptance shall be determined by the Secretary of the Interior.

In any case in which a claim against a State, county, or political subdivision thereof, for taxes collected upon such lands during the trust period has been reduced to judgment and such judgment remains unsatisfied in whole or in part, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes including penalties and interest paid thereon, and upon payment by the judgment debtor of the costs of the suit, to cause such judgment to be released: Provided further, That in any case, upon submission of adequate proof, the claims for taxes paid by or on behalf of the patentee or his Indian heirs or Indian devisees have been satisfied, in whole or in part, by the State, county, or political subdivision thereof, the Secretary of the Interior is authorized to reimburse the State, county, or political subdivision for such amounts as may have been paid by them.

§ 353. Sections inapplicable to certain tribes

The provisions of sections 337, 351, 352, 372, 373, 403, 406, 407, and 408 of this title shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma. Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or Act of Congress, to a person who had died, or who dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life.

§ 354. Lands not liable for debts prior to final patent

No lands acquired under the provisions of sections 331-334 of this title shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the final patent in fee therefor.

§ 355. Laws applicable to lands of full-blooded members of Five Civilized Tribes

The lands of full-blooded members of any of the Five Civilized Tribes are made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character.

§ 356. Allowance of undisputed claims of restricted allottees of Five Civilized Tribes

No undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, or uncontested agricultural and mineral leases (excluding oil and gas leases) made by individual restricted Indian allottees, or their heirs, shall be forwarded to the

Secretary of the Interior for approval, but all such undisputed claims or uncontested leases (except oil and gas leases) shall be paid, approved, rejected, or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma: Provided, however, That any party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma may appeal from the same to the Secretary of the Interior within thirty days from the date of said decision or order.

§ 357. Condemnation of lands under laws of States

Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.

§ 358. Repeal of statutory provisions relating to survey, classification, and allotments which provide for repayment out of Indian moneys

Any and all provisions contained in any Act passed prior to March 7, 1928,

for the survey, resurvey, classification, and allotment of lands in severalty under sections 331 and 334 of this title, which provide for the repayment of funds appropriated proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purposes, are hereby repealed: Provided further, That the repeal hereby authorized shall not affect any funds authorized to be reimbursed by any special Act of Congress wherein a particular or special fund is mentioned from which reimbursement shall be made.

CHAP. 246.--An Act To Provide for allotments to certain members of the Hoh, Quileute, and Ozette tribes of Indians in the State of Washington.

Be it enacted by the Senate and house of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to make allotments on the Quinaielt Reservation, Washington, under the provisions of the allotment laws of the United States, to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third, eighteen hundred and fifty-six, and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes: Provided, That the allotments authorized herein shall be made from the surplus lands on the Quinaielt Reservation after the allotments to the Indians thereon have been completed.

Approved, March 4, 1911.

APPENDIX H

TREATY WITH THE QUINAIELT, ETC., 1855.

ARTICLE 1. The said tribes and bands hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows: Commencing at a point on the Pacific coast, which is the southwest corner of the lands lately ceded by the Makah tribe of Indians to the United States, and running easterly with and along the southern boundary of the said Makah tribe to the middle of the coast range of mountains; thence southerly with said range of mountains to their intersection with the dividing ridge between the Chehalis and Quiniatl [sic] Rivers; thence westerly with said ridge to the Pacific coast; thence northerly along said coast to the place of beginning.

ARTICLE 2. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of land sufficient for their wants within the Territory of Washington,

to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian affairs or Indian agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them. In the meantime it shall be lawful for them to reside upon any lands not in the actual claim and occupation of citizens of the United States, and upon any lands claimed or occupied, if with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through said reservation, on compensation being made for any damage sustained thereby.

ARTICLE 3. The right of taking fish at all usual and accustomed grounds and stations is secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing the same; together with the privilege of hunting,

gathering roots and berries, and pasturing their horses on all open and unclaimed lands. Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens; and provided, also, that they shall alter all stallions not intended for breeding, and keep up and confine all stallions themselves.

ARTICLE 4. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of twenty-five thousand dollars, in the following manner, that is to say: For the first year after the ratification hereof, two thousand five hundred dollars; for the next two years, two thousand dollars each year; for the next three years, one thousand six hundred dollars each year; for the next four years, one thousand three hundred dollars each year; for the next five years, one thousand dollars each year; and for the next five years, seven hundred dollars each year. All of which sums of money shall be applied to the use and benefit of the said Indians under the directions of the President of the United States,

who may from time to time, determine at his discretion upon what beneficial objects to expend the same; and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

ARTICLE 5. To enable the said Indians to remove to and settle upon such reservation as may be selected for them by the President, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of two thousand five hundred dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.

ARTICLE 6. The President may hereafter, when in his opinion the interest of the Territory shall require, and the welfare of the said Indians be promoted by it, remove them from said reservation or reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them

with other friendly tribes or bands, in which later case the annuities, payable to the consolidated tribes respectively, shall also be consolidated; and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indians, and which they shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment made accordingly therefor.

ARTICLE 7. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of the individuals.

ARTICLE 8. The said tribes and bands acknowledge their dependence on the

Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens; and should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defense, but will submit all matters of difference between them and other Indians to the government of the United States, or its agent, for decision and abide thereby; and if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as is prescribed in this article in case of depredations against citizens. And the said tribes and bands agree not to shelter or conceal offender against the laws of the United States, but to deliver them to the authorities for trial.

ARTICLE 9. The above tribes and bands are desirous to exclude from their

reservations the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging to said tribes who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her, for such time as the President may determine.

ARTICLE 10. The United States further agree to establish at the general agency for the district of Puget Sound, within one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to the children of the said tribes and bands in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and to employ a blacksmith, carpenter, and farmer for a term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said

central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and medical attendance to be defrayed by the United States, and not deducted from their annuities.

ARTICLE 11. The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

ARTICLE 12. The said tribes and bands finally agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside on their reservations without consent of the superintendent or agent.

ARTICLE 13. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs, and the undersigned chiefs, headmen, and delegates of the aforesaid tribes and bands of Indians, have hereunto set their hands and seals,

at Olympia, January 25, 1856, and on the Qui-nai-elt River, July 1, 1855.

Isaac I. Stevens, Governor and Sup't of Indian Affairs.

APPENDIX I

QUINAIELT RESERVE.

EXECUTIVE MANSION,
November 4, 1873.

In accordance with the provisions of the treaty with the Quinaielt and Quillehute Indians, concluded July 1, 1855, and January 25, 1856 (Stats. at Large, vol. 12, p. 971), and to provide for other Indians in that locality, it is hereby ordered that the following tract of country in Washington Territory (which tract includes the reserve selected by W. W. Miller, superintendent of Indian affairs for Washington Territory, and surveyed by A. C. Smith, under contract of September 16, 1861) be withdrawn from sale and set apart for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific coast, viz: Commencing on the Pacific coast at the southwest corner of the present reservation, as established by Mr. Smith in his survey under contract with Superintendent Miller, dated September 16, 1861; thence due east, with the line of said survey, 5

miles to the southeast corner of said reserve thus established; thence in a direct line to the most southerly end of Quinaielt Lake; thence northerly around the east shore of said lake to the northwest point thereof; thence in a direct line to a point a half mile north of the Queetshee River and 3 miles above its mouth; thence with the course of said river to a point on the Pacific coast, at low-water mark, a half mile above the mouth of said river; thence southerly, at low-water mark, along the Pacific to the place of beginning.

U. S. Grant

APPENDIX J

CONSTITUTION OF THE QUINAULT INDIAN NATION

PREAMBLE

We, the Indians of the Quinault Indian Nation, in order to establish a better tribal organization; to preserve our land base, culture and identity; to safeguard our interest and general welfare; to secure the blessings of freedom [sic] and liberty for ourselves and for our posterity; and to amend our By Laws of August 22, 1922, as amended, do hereby approve and adopt this Constitution.

ARTICLE I - SOVEREIGNTY

SECTION 1 - SOVEREIGNTY: Notwithstanding the issuance of any patent, the jurisdiction and governmental power of the Quinault Nation shall extend to: (a) all lands, resources, and waters reserved to the Quinault Nation pursuant to the Treaty of Olympia, 12 Stat. 971, established by Executive Order dated November 4, 1873 (I kapp. 923) [sic] and to all persons acting within the boundaries of those reserved lands or waters; (b) all usual and accustomed fishing grounds, open and unclaimed lands reserved for

hunting and gatherings and other lands necessary for the appropriate use of fishing and hunting grounds; and all members exercising tribal hunting, gathering and fighing [sic] rights on or off the Quinault Reservation in Quinaults usual and accustomed fighing [sic] grounds or: (c) all lands or waters held by the United States in trust or reserved by the Quinault Nation for the use and benefit of any member of the Quinault Tribe when such lands or waters are not within the boundaries of an established Indian Reservation; (d) all members of the Quinault Nation while such members are within the boundaries of the United States of America or any of its Reservations, states, territories, possessions, zones, or districts; except where such jurisdiction is expressly limited by the laws of the United States; (f) offshore marine waters for a distance concurrent with the jurisdiction of the United States.

SECTION 2 - GENERAL WELFARE: It shall be the goal of the Quinault Nation to provide for the general safety and welfare of all persons acting by the right of membership in the Quinault

Nation or acting or residing within the jurisdiction of the Quinault Nation.

ARTICLE II - ENROLLMENT

SECTION 1 - MEMBER: (a) Any person of 1/4 Quinault, Queets, Quileute, Hoh, Chinook, Chehalis, or Cowlitz blood of one of the named Tribes or combined, not a member of any other federally recognized Indian tribe. (b) any person adopted into the Nation by a majority vote of the General Council, at a regular annual meeting of that council. The ownership of trust land on the Quinault Reservation shall be an important consideration in recommending adoption, but such ownership shall not be considered a necessary or sufficient qualification or condition for a recommendation of adoption.

SECTION 2 - ENROLLMENT COMMITTEE: (a) Membership. The enrollment committee shall consist of not less than four (4), nor more than nine (9) members of the Quinault Nation, appointed by the Business Committee. (b) Duties. The enrollment committee shall: (1) accept applications for enrollment and adoption, (2) investigate all applications for enrollment and adoption, (3) approve all appli-

cations for enrollment where applicants qualify for membership in the Quinault Nation under the provisions of this Constitution. A list of all persons approved for enrollment during the interim between annual General Council meetings shall be published and posted publicly in places determined to be appropriate to inform the general membership of pending enrollment thirty (30) days prior to the next annual General Council meeting and presented by the enrollment committee to the General Council at the next annual General Council meeting, (4) recommend to the General Council for their vote, persons approved by the enrollment committee for adoption into the Quinault Nation; a list of such persons shall be posted with the pending enrollment list, (5) participate in the interviewing and hiring of an enrollment clerk, (6) issue an official notice of denial of enrollment to any person, who, after all due investigation by the enrollment committee is found not to be qualified for enrollment in the Quinault Nation, (7) issue an official notice of denial of recommendation to any person, who, after all due

investigation by the enrollment committee is found not to be acceptable for a recommendation of adoption.

SECTION 3 - APPROVED APPLICANTS: All persons approved for enrollment by the enrollment committee shall be considered members for all purposes until their names are presented at an annual General Council meeting; provided, persons approved for enrollment shall not be permitted to vote on the enrollment or adoption of any person.

SECTION 4 - APPEALS: (a) Persons denied enrollment by a final act of the enrollment committee may appeal the decision of the enrollment committee to the General Council and if denied by the General Council may appeal to the Quinault Tribal Court. Persons denied enrollment may request a recommendation of adoption. (b) Persons denied a recommendation of adoption by a final act of the enrollment committee may request that the General Council adopt them at an annual meeting of the Council. The decision of the General Council shall be final.

SECTION 5 - OBJECTIONS TO ENROLLMENT: Any member may object to the enrollment of any person approved for enrollment at the time the name of that person approved for enrollment is presented to the General Council by the enrollment committee. The name of the member objecting shall be recorded and that objecting member shall have ninety (90) days to present sufficient evidence to cause reexamination of the enrollment application to the enrollment committee. During that ninety (90) day period and during any disenrollment investigation, the person objected to shall exercise the rights of a member. If the ninety (90) days shall pass without sufficient evidence being presented to the enrollment committee to cause the enrollment committee to reinvestigate the application, the person objected to shall be enrolled.

SECTION 6 - DISENROLLMENT: (a) The enrollment committee shall not begin review of the enrollment of a member without first notifying a person subject to a disenrollment investigation that he or she is subject to such an investigation and allowing such person to view all

evidence being used to question member status. (b) the enrollment committee in a disenrollment investigation shall follow all procedures set out herein for enrollment, including presentation of the names of any finally disenrolled person to the General Council at the next annual meeting of that Council. (c) exclusive grounds for disenrollment shall be that a person submitted fraudulent evidence in the application for enrollment in the Quinault Nation in order to qualify under the provisions of this Constitution, (d) adopted members shall not be subject to disenrollment proceedings, (e) persons finally disenrolled shall have the right to appeal their disenrollment to the Quinault Tribal Court.

ARTICLE III - GENERAL COUNCIL

SECTION 1 - MEMBERSHIP IN THE GENERAL COUNCIL: All members, including adopted members of the Quinault Nation shall be members of the General Council.

SECTION 2 - VOTING: Members of the General Council age 18 years or more, who are present at the appointed time and place of elections shall be permitted to vote in General Council meetings.

SECTION 3 - MEETINGS: (a) The annual meeting of the General Council shall be held on the last Saturday in March at a place within the boundaries of the Quinault Reservation. (b) All meetings of the General Council shall be announced by the Business Committee by posting notices at Taholah, Queets, Amanda Park and any other place determined by the Business Committee at least ten (10) days in advance of the meeting and by publishing notice in a newspaper of general circulation in the vicinity of the Reservation. (c) Special meetings may be called by the Business Committee or by fifty (50) voting members by giving and posting the required notice. (d) The purpose of the General Council meetings shall be to elect or recall the members of the Business Committee and to declare the will of the General Council on issues placed before the General Council by the agenda and by persons raising issues at any meeting. (e) A quorum for conducting business at any meeting shall be fifty (50) voting members. (f) The agenda for the annual meeting shall be published by the Secretary of the Tribe. All items to

be placed on the agenda shall be submitted to the Secretary thirty (30) days in advance of the annual meeting. Items on the agenda shall be considered before issues or questions raised from the floor. (g) In addition to the annual meeting, quarterly General Council meetings may be held.

SECTION 4 - BILL OF RESERVED POWERS: The following powers shall be reserved to the General Council and the Business Committee or other agency of the Nation shall be required to obtain the advise and consent of the General Council prior to taking any action with regard to these powers. Any action the Business Committee shall take with regard to these powers without obtaining the advice and consent of the General Council shall be void and have no legal effect. (a) The relinquishment of any National criminal or civil jurisdiction to any agency, public or private; provided that this section shall not prevent the Business Committee from commissioning non-National or non-Bureau of Indian Affairs peace officers to enforce National laws and regulations. (b) The termination of the

Quinault Reservation. (c) The adoption of person into the Nation. (d) The sale of hunting or fishing rights, grounds, or stations. (e) Any other act which jeopardizes any treaty right of the Quinault Nation; or is prohibited to the Business Committee by this Constitution, or by instruction of the General Council, without prior approval of the General Council.

ARTICLE IV - BUSINESS COMMITTEE

SECTION 1 - OFFICERS: The officers of the Nation shall consist of the President, the Vice-President, Secretary and Treasurer and seven (7) Councilmen. The said eleven (11) officers shall constitute the Business Committee of the Quinault Nation and all shall have the right to vote on issues brought before the Business Committee.

SECTION 2 - QUORUM: A quorum of the Business Committee shall consist of at least six (6) officers, including the President and Vice-President, and decisions shall be made by a majority vote of those present. In the absence of the President and Vice-President, no meeting shall be held unless an officer has been

duly appointed by the President or the Vice-President to chair the meeting.

SECTION 3 - ELECTION: The officers shall be elected at the annual meeting of the General Council and shall serve three year staggered terms. Nominations shall be made from the floor. Election shall be by secret ballot. No absentee ballots shall be allowed. Officers shall be elected one at a time. When during the course of any General Council meeting, any presently serving officer shall be elected to fill any other position on the Business Committee, the position vacated by the election shall be immediately filled by electing another qualified person to the remainder of the term of the vacated position.

SECTION 4 - QUALIFICATIONS: Any enrolled member who maintains permanent residence within the Reservation boundaries, is present at the election, and is entitled to vote in the General Council, shall be eligible to be elected as an officer of the Nation, provided that no more than one brother, sister, father, mother, husband, wife or child of any person already serving as an officer may

be elected as an officer. Officers moving their residence outside the boundaries of the Reservation during their term of office will be considered to have resigned from the Business Committee.

SECTION 5 - REMOVAL: (a) Any officer who is absent from three consecutive regular Business Committee meetings without an excuse acceptable to the Business Committee or who commits acts in violation of his position of trust as an officer of the Quinault Nation shall be removed from office. (b) Prior to removal pursuant to (a) above, the officer whose removal is contemplated shall be given a reasonable opportunity to answer charges and a written statement of the charges against him shall be made available to him fifteen (15) days prior to said meeting. (c) An officer who has been removed shall have the right within thirty (30) days to file an appeal to the General Council. In the event of such an appeal, the Business Committee shall promptly call a special meeting of the General Council, at which special meeting, it shall be decided whether the removed officer shall be permanently

removed. Failure to obtain a quorum of the General council at such a special meeting shall be considered affirmation of removal of any officer.

SECTION 6 - RECALL: Any officer may be removed for any reason by vote of the General Council on a recall petition, specifying the reasons for removal. A recall petition shall be signed by at least fifty (50) qualified voters, and filed with the Business Committee. Upon the filing of such a petition, the Business Committee shall promptly call a special meeting of the General Council. Written notice of the petition shall be given to the officer at least fifteen (15) days prior to the meeting, and he shall be entitled to state his case before the General Council. The decision of the General Council shall be final. Failure to obtain a quorum at such a General Council meeting shall require the dismissal of the recall petition and no new recall petition may be filed against the officer in question for a period of one year following said meeting.

SECTION 7 - VACANCIES: Vacancies on the Business Committee shall be filled no

more than sixty (60) days following the occurance of a vacancy by a 2/3 vote of a quorum of the remaining officers; provided that such appointee is a voting member of the Nation and is otherwise qualified. The vacancy shall be filled by election at the next General Council meeting for the remainder of the existing term. No person not elected to the Business Committee by the General Council shall be appointed to the position of President or Vice-President.

SECTION 8 - MEETINGS: Regular open meetings of the Business Committee shall be held at least once in each month on a regular schedule set by the Business Committee. Special meetings may be called on a reasonable notice to all officers. Executive sessions of the Business Committee may be held on majority vote of the Committee. All regular meetings shall be held within the boundaries of the Quinault Reservation.

SECTION 9 - BY-LAWS: The Business Committee shall by ordinance adopt its own procedures and duties of officers, except as herein provided.

ARTICLE V - POWER AND RESPONSIBILITIES OF THE BUSINESS COMMITTEE

SECTION 1 - GENERAL: It shall be the duty of the Business Committee to govern all people, resources, lands, and waters under the jurisdiction of or reserved to the Quinault Nation in accordance with this Constitution, the Quinault Tribal Code of laws, the Quinault Treaty, the laws of the United States expressly limiting the powers of the Quinault Nation, and the instructions of the General Council. Any rights, powers and authority expressed, implied, or inherent vested in the Nation but not expressly referred to in this Constitution shall not be abridged by this Article, but shall be exercised by the Business Committee or the General Council by the adoption of appropriate ordinances and agreements.

SECTION 2 - LAWS: The Business Committee shall have the power to enact laws for the welfare of the Nation; provided, however, that such laws are not in conflict with this Constitution, and that public hearings be held on each such law prior to their adoption.

SECTION 3 - POWERS: The Business Committee shall have the power: (a) To enter into agreements on behalf of the Nation with federal, state, and local governments or agencies, and other public and/or private organizations or persons; provided, that these agreements are not in conflict with this Constitution, the instructions of the General Council, or the laws of the Quinault Nation. (b) To provide for the execution and enforcement of the laws of the Quinault Nation; and to establish an independent Tribal Court, and to provide by law for its jurisdiction, procedures, and appointment or election of its judges; and to charter and regulate associations, corporations for profit and not for profit, towns, special districts, schools, religious institutions, financial institutions and all other entitities; and to establish National enterprizes as branches of the National government. (c) To levy and collect taxes on members and other persons or entities within the National jurisdiction; provided that no tax shall be levied on trust real property; further provided that no tax shall be levied

without holding public hearings convenient in time and place to all members of the Quinault Nation and those subject to its jurisdiction; to determine the need for, and effect of, such a tax. (d) To assert the defense of sovereign immunity in suits brought against the Nation and to waive the said defense by agreement where National realty or personalty not held in trust by the United States is pledged or when property held in trust by the United States is pledged with the consent of the United States. (e) To govern the sale, disposition, and lease of tribally owned assets, and to provide for the zoning and other land use regulation of all lands within the boundaries of the Reservation and the jurisdiction of the Quinault Nation; and for the purity, volume, and use of all water to which the Quinault Nation and the Quinault people are entitled; and for the purity of the air within the Quinault Reservation. (f) To manage, lease, permit, sell, or otherwise deal with tribally owned lands, tribally owned interests in lands, water rights, fishing stations, mineral rights, hunting

grounds, fish and wildlife resources; or other tribally owned assets, and to purchase or otherwise acquire lands or interests in lands within or without the Reservation, and to hold those lands in tribal or federal trust and to regulate allotted trust and non-trust lands within the Reservation boundaries insofar as such regulation is not prohibited by federal law and does not violate the rights of owners; provided, that tribally owned lands held in trust by the United States shalls not be sold or encumbered unless authorized by the General Council. The authority to manage National lands and timber may be delegated to a special committee or committees. (g) To engage in any business that will further the economic well being of the Nation and of the members of the Nation, or undertake any program or projects designed for the economic advancement of the people or the Nation; and to regulate the conduct of all business activities within Reservation boundaries. (h) To borrow money from the federal government or other sources, to direct the use of such funds of productive purposes, and to pledge or

assign chattels or income due or to become due. (i) 1--To administer any funds within the control of the Nation in accordance with an approved National budget; to make expenditures from available funds for tribal purposes including salaries and expenses of tribal employees or officials, 2--The Business Committee shall prepare an annual Nation budget, 3--This budget shall include all normal operating expenses, any special projects or expenditures contemplated by the Nation, 4--All expenditures of tribal funds by the Business Committee shall be authorized by it or by the General Council in legal session and the amounts so expended shall be a matter of public record. 5--The Business committee shall have authority to approve amendments to the Nation's annual budget for special appropriations in any budget year. 6--The approved budget shall be posted at the National Business Office in Taholah, Queets, and the Post Office in Taholah. (j) To provide for an escheat in order that real and personal property of members who die intestate and without heirs shall revert to the Nation. (k) To

manage, protect and preserve the wildlife and natural resources of the Nation and to regulate hunting, fishing, including shell-fishing, and trapping within the jurisdiction of the Nation. This power may be delegated to a special committee or committees. (l) On petition by fifty (50) voting members of the Nation or on its own motion, the Business Committee shall, within a reasonable time, hold a general membership election by secret ballot on any issue. (m) All officers and employees of the Nation who have possession of tribal funds shall account for same periodically to the Business committee. All officers and employees handling National funds shall be bonded. There shall be an annual audit of all National funds handled by National officers or employees to be performed by the Bureau of Indian Affairs or Certified Public Accountants. (n) To condemn land or interest in lands for public purposes within the boundaries of the Reservation; provided that owners of the lands condemned shall be paid the fair market value of such lands and any timber or buildings thereon. (o) To exact all laws

which shall be necessary and proper for carrying into execution any power delegated to the Business Committee or delegated to any person or committee under the supervision of the Business Committee. (p) To govern the inheritance of real and personal property owned by members.

ARTICLE VI - RATIFICATION

This Constitution shall go into effect when ratified by two thirds (2/3) of all members eligible to vote, present and voting at a General Council meeting at which a debate and vote on this Constitution has been placed on the agenda. All enrolled members of the Quinault Nation shall be notified of such a General Council meeting at least thirty (30) days prior to such a meeting, and the notice provided shall make specific reference to the proposed ratification of this Constitution. Election of officers provisions shall not take effect until the annual meeting of the General Council following the adoption of this Constitution.

ARTICLE VII - AMENDMENT

SECTION 1: This Constitution may be

amended by a two thirds (2/3) vote of a quorum of the General council at an annual or special meeting, provided, however, that the notice of the meeting at which an amendment is proposed shall be given at least thirty (30) days before the meeting, and shall set forth the proposed amendment and an explanation thereof; and provided further that after discussion of the amendment at the meeting there shall be a recess of at least 30 minutes to enable the members to further discuss the amendment among themselves.

SECTION 2: The Business Committee shall call a meeting to consider a proposed amendment upon its own motion, or upon receipt of a petition signed by fifty (50) voting members or upon resolution of the General Council.

ARTICLE VIII - ENFORCEABILITY

The provisions of the Constitution shall be enforceable exclusively in the Quinault Tribal Court and in the Federal Courts of the United States where provided by federal law, and shall not be enforceable in any other Court, except where the Quinault Tribe brings suit in

its own name in any other court. This section shall not be interpreted as a consent to suit or waiver of sovereign immunity by the Quinault Indian Nation.

ARTICLE IX - APPROVAL OF SECRETARY OF INTERIOR

The Secretary of the Interior shall have the power to review actions taken pursuant to the herein named powers and all other National powers, but only in those cases and only to the extent that the Secretary has been given such powers of review by express statutory command of the Congress of the United States.

ADOPTED MARCH 22, 1975.

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APPENDIX K

TITLE 40
BUSINESS LICENSE ORDINANCE

AN ORDINANCE, relating to and providing for a license for occupations, pursuits, and privileges; defining offenses and prescribing penalties.

40.01. Exercise of Revenue License Power. The provisions of this ordinance shall be deemed an exercise of the power of the Business Committee of the Quinault Tribal Council to license for revenue.

40.02. Definitions. In construing the provisions of this ordinance, save when otherwise declared or clearly apparent from the context, the following definitions shall be applied:

(a) The term "tax year" or "taxable year" shall mean either the calendar year or the taxpayer's fiscal year when permission is obtained from the Business Committee to use a fiscal year in lieu of the calendar year.

(b) The word "person" or "company" herein used interchangeably means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company,

joint-stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and includes any instrumentality thereof, provided a valid tax may be levied upon or collected therefrom under the provisions of this Ordinance.

(c) The word "Business" includes all activities engaged in with the object of gain, benefit or advantage to the taxpayer or another person or class, directly or indirectly.

(d) The term "Business Committee" is a representative body of the Quinault Tribe whose duties are to represent the Indians of the Reservation in all matters pertaining to the tribe and in all Tribal matters, arising between the sessions of the council, to follow the instructions of the council and render any aid they can to any individual member of the tribe needing assistance; to make a full report of their work to each succeeding council and in general to perform all of the duties of an executive committee between meetings of the council.

(e) The term "engaging in

business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(f) The word "successor" means any person who shall, through direct or indirect means or conveyance, purchase or suceed to the business, or portion thereof, or any part of the stock of goods, wares or merchandise or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging, or otherwise disposing of his business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any control as to which such person is a surety or guarantor. (sic)

(g) The word "taxpayer" includes any individual, group of individuals, corporation or association required to have a Business License hereunder, or liable for any license fee or tax, or for the collection of any license fee or tax hereunder, or who engages in any business, or who performs any act, for which a license fee

or tax is required by this Ordinance.

(h) Words in the singular number shall include the plural, and the plural shall include the singular. Words in one gender shall include all other genders.

(i) The word "Secretary" shall mean the Secretary of the Quinault Tribal Council.

(j) The word "Treasurer" shall mean the Treasurer of the Quinault Tribal Council.

(k) The word "Council" shall mean the Quinault Tribe.

40.03. Companies To Hire Indian Labor. Where and whenever possible Indian labor shall be hired by companies operating by license within the Quinault reservation. In cases of fish and clam buying companies with receiving stations within the reservation, such as fish houses and trucks buying clams off the reservation beaches, all Indian labor is required. A white man married to an Indian woman does not take precedence over that of an Indian as to employment, and said Indian is required to be a bona fide resident of Taholah. [This is a very old tribal ruling.]

40.04. Business Licenses Required by

Both Non-Indian and Indian Alike. It is hereby duly enacted in this Ordinance that both Non-Indians and Indians alike, regardless of degree of Indian blood, are required to secure a reservation business license, and both Non-Indians' and Indians' license fees shall be equal.

40.05. Business License Required. On or after the 24th day of July, 1961, if this ordinance is then in effect, otherwise on and after the effective date of this Ordinance, no person, whether subject to the payment of a tax or not, shall engage in any business or activity in the Quinault Indian Reservation for which a license fee or tax is imposed by this Ordinance without having first obtained and being a holder of a valid and subsisting license so to do, to be known as a "Business License" issued under the provisions of this Ordinance as hereinafter provided, and without paying the license fee or tax imposed by this Ordinance, and in addition the sum of $5.00, as a license fee which shall accompany the application for the license. Such license shall expire at the end of the calendar year in which it is issued, and a new license shall be required for each

calendar year. Applications for the license shall be made to and issued by the Business Committee on forms provided by them.

40.06. Bond Required. The usual procedure in the course of business in applying for a Business License a bond is hereby required, forms for such bonds may be obtained from the Treasurer, Quinault Tribal Council. (sic)

40.07. Payment of License Fees. The license fee or tax payable hereunder shall at the time the return is required to be filed hereunder be paid to the Quinault Tribal Treasurer by bank draft, certified check, cashier's check, personal check or money order, or in cash. If payment is made by draft or check, the tax or fee shall not be deemed paid unless the check or draft is honored in the usual course of business; nor shall the acceptance of any sum by the Treasurer be an acquittance or discharge of the tax or fee due unless the amount of the payment is in full and actual amount due. The return shall first be presented to the Tribal Treasurer, who shall endorse thereon the date and amount of the payment received by him and return

the same to the taxpayer who shall thereupon forthwith file the return with the Treasurer.

The Secretary is authorized, but not required to mail to taxpayers forms for applications for license and forms for returns, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from making application for and securing the license required, making returns, and payment of the license fee or tax, when and or due hereunder. (sic)

40.08. Applications and Returns Confidential. The applications and returns made to the Business Committee pursuant to this Ordinance shall not be made public, nor shall they be subject to the inspection of any person except the President, Secretary, Treasurer, and the members of the Business Committee; and it shall be unlawful for any person to make public or to inform any other person as to the contents or any information contained in or to permit inspection of any application or return except as in this section authorized.

40.09. Business Committee to Make Rules. The Business Committee shall have

the power, and it shall be their duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this Ordinance or with law for the purpose of carrying out the provisions thereof, and it shall be unlawful to violate or fail to comply with any such rule or regulation.

40.10. Revocation of License. The Business Committee may revoke the license issued to any taxpayer who is in default in any payment of any license fee or tax hereunder, or who shall fail to comply with any of the provisions of this Ordinance. Notice of such revocation shall be mailed to the taxpayer by the Secretary, and on and after the date thereof any such taxpayer who continues to engage in business shall be deemed to be operating without a license and shall be subject to any or all penalties herein provided.

40.11. Penalties. Any person violating or failing to comply with any of the provisions of this Ordinance or any lawful rule or regulations adopted by the Business Committee pursuant thereto, if a non-Indian, upon conviction thereof, shall be punished by eviction from the reservation

premises and his Business License revoked permanently, depending upon the circumstances, or said license revoked temporarily to the discretion of the Business Committee.

Any taxpayer who engages in or carries on, any business subject to a tax hereunder without having his Business License so to do shall be guilty of a violation of this Ordinance for each day during which the business is so engaged in, or carried on; and any taxpayer who fails or refuses to pay the license fee or tax, or any part thereof, on or before due date, shall be deemed to be operating without having his license so to do.

Fishbuyers possessing a Quinault Reservation Business License buying salmon for commercial purposes from the reservation streams following the closure of the tribe's commercial seasons, said Business License shall be revoked by the Business Committee. The same shall apply to razor clams taken from the reservation clam beds. (sic)

40.12. This Ordinance shall take effect and be in force from and after this passage and legal publication.

Originally enacted by the Business Committee on July 24, 1961.

Horton Capoeman, President
Frederick Saux, Secretary

APPENDIX L

RESOLUTION NO. 77 - 55
of the
QUINAULT BUSINESS COMMITTEE

WHEREAS, the Quinault Business Committee is the governing body of the Quinault Indian Nation; and

WHEREAS, the Quinault Business Committee approved for public hearings on May 9, 1977, the draft of Rules Under Quinault Tribal Code, Title 40, Business License Ordinance; and

WHEREAS, three public hearings were held as follows: Queets, Washington, May 24, 1977; Taholah, Washington, May 25, 1977; and Amanda Park, Washington, May 26, 1977; after having been duly announced and advertised for the public's information, although not required by law; and

WHEREAS, all comments received have been reviewed and given consideration in regard to amending the draft of the proposed rules; now therefore be it

RESOLVED, that "Rules Under Quinault Tribal Code, Title 40, Business License Ordinance," as amended, are hereby adopted pursuant to Quinault Tribal Code § 40.09, and that Resolution No. 77-47 of the Quinault Business Committee is hereby superceded and repealed; now futhermore be it

RESOLVED, that the rules hereby adopted become effective August 1,

1977, and that any tax arising thereunder becomes due and payable August 15, 1977.

/s/ Joseph B. De La Cruz
Joseph B. DeLaCruz
Chairman
Quinault Business Committee

C E R T I F I C A T I O N

As secretary of the Quinault Business Committee, I hereby certify that the foregoing resolution was duly enacted by the Quinault Business Committee at Taholah, Washington, on the 25th day of July, 1977, and was adopted by a vote of 3 FOR and 2 AGAINST, at which time a quorum was present and voting.

/s/ Pearl L. Baller
Pearl L. Baller
Secretary
Quinault Business Committee

RULES UNDER QUINAULT TRIBAL CODE, TITLE 40, BUSINESS LICENSE ORDINANCE ADOPTED PURSUANT TO Q.T.C. 40.09; EFFECTIVE JULY 1, 1977

RULE 1.40 DEFINITIONS

For the purpose of this title, and unless otherwise required by the context:

(1) The term "commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

(a) any use as a consumer; and

(b) the manufacturing of articles, substances, or commodities.

(2) The term "employee" means any person who carries out duties within this reservation under the direction and control of the taxpayer in return for remuneration in any form. The term does not include persons engaging in an independent trade or profession performing services for hire.

(3) The term "extractor" means every person who from his own land or from the land of another, either directly or by contracting with others for the necessary labor or mechanical services, for sale or

for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees or other natural products, or takes, cultivates, or raises fish, shellfish, or other sea or inland water foods or products. It does not include persons performing under contract the necessary labor or mechanical services for others.

(4) The term "manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use, from his own materials or ingredients any articles, substances or commodities.

(5) The term "to manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof, a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use.

(6) The term "sale" means any trans-

fer of the ownership of, title to, or possession of property for a valuable consideration. It includes renting or leasing, conditional sales contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(7) The term "sale at wholesale" means any sale of tangible personal property for resale or for processing or manufacturing for resale, and means any charge made for labor and services rendered by a subcontractor in respect to real or personal property for sale at retail or a prime contractor.

(8) The term "sale at retail" means any sale of tangible personal property for use or consumption and not for resale in any form as tangible personal property.

(9) The term "public utility" means every person engaging in:

(a) carrying on a telephone or telegraph business for hire;

(b) carrying on the business of operating a plant or system for the distribution of water for hire or sale;

(c) carrying on the business of operating a plant or system for the generation, production, or distribution of electrical energy for hire or sale;

(d) carrying on the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

The term shall include both publicly owned utilities and investor owned utilities.

RULE 2.40 TAX RATES

(1) Tax Upon Extractors. Upon every person engaging within this reservation in business as an extractor as enumerated below; as to such persons the amount of the tax with respect to such business shall be as specified, and if two or more employees are employed with respect to such business, the amount of tax specified shall be multiplied by the number of employees:

(a) Harvesting green timber; fifty dollars;

(b) Cedar Salvage Operation; twenty-five dollars;

(c) All others; twenty-five dollars.

Exemptions. The tax rate hereby levied shall not apply to the following extractors:

(a) Any person taking fish or shellfish pursuant to a valid tribal permit issued for the taxable year;

(b) Any owner of land held in trust by the United States taking a natural resource from such land during the time it is held in trust for him or her.

(2) Tax Upon Manufacturers. Upon every person engaging within this reservation in business as a manufacturer not specifically enumerated in these rules; as to such persons the amount of the tax with respect to such business shall be twenty-five dollars, and if two or more employees are employed with respect to such business the amount of the tax shall be twenty-five dollars multiplied by the number of employees.

(3) Tax Upon Public Utilities. Upon every person engaging within this reservation in business as a public utility; as to such persons the amount of the tax with respect to such business shall be five hundred dollars.

(4) Tax On Wholesalers. Upon every person engaging within this reservation in the business of making sales at wholesale not specifically enumerated in these rules; as to such persons the amount of the tax with respect to such business shall be twenty-five dollars and if two or more employees are employed with respect to such business the amount of the tax shall be twenty-five dollars multiplied by the number of employees.

(5) Tax On Retailers. Upon every person engaging within this reservation in the business of making sales at retail as enumerated below; as to such persons the amount of the tax with respect to such business shall be as specified, and if two or more employees are employed with respect to such businesses the amount of the tax specified shall be multiplied by the number of employees:

(a) Any business making sales at retail of tangible personal property for use or consumption including but not limited to appliance stores, clothing stores, sporting goods stores, and dealers in automobile trucks, boats, trailers, campers, mobile homes, heating systems and

fuels, heavy equipment, machinery of all kinds and construction, logging, mining, fishing, electrical and plumbing, materials, equipment, tools and supplies; fifty dollars;

(b) Abstract title insurance and escrow businesses; one hundred dollars;

(c) Amusement and recreation businesses including but not limited to golf, billiards, pool, pinball and other coin operated game machines, bowling, skating, operation of charter boats for sport fishing, river and fishing guides, and private fishing operations; twenty-five dollars;

(d) Automobile parking and storage garage businesses; fifty dollars;

(e) Automobile towing; fifty dollars;

(f) Contractors and subcontractors extracting for hire;

(1) Harvesting green timber; fifty dollars;

(2) Cedar Salvage Operation; twenty-five dollars;

(3) All Others; twenty-five dollars;

(g) Contractors and subcontrac-

tors manufacturing for hire; twenty-five dollars;

(h) Contractors and subcontractors (excluding those specifically named in these rules) including but not limited to building construction, road and bridge construction, plumbing, well drilling, sewage system, electrical, heavy equipment, earth moving and transporting goods for hire; twenty-five dollars;

(i) Cleaning, fumigating, razing or moving existing structures; fifty dollars;

(j) Coin operated vending machine operators; fifty dollars;

(k) Credit Bureau businesses; one hundred dollars;

(l) Furnishing of lodging and all other services by a resort, hotel, rooming house, tourist court, motel, trailer camp, campground, and the granting of any similar license to use real property for periods of less than thirty days; one hundred dollars;

(m) Freezer locker rental or lease; twenty-five dollars;

(n) Gasoline service stations; twenty-five dollars;

(o) Gas, diesel and oil floats servicing boats; fifty dollars;

(p) Mobile fuel and oil trucks servicing logging and salvage operations; fifty dollars;

(q) Laundromats, laundry and dry cleaners; twenty-five dollars;

(r) Liquor stores; two hundred dollars;

(s) Printers and publishers; twenty-five dollars;

(t) Repairing, cleaning, and installing of tangible personal property including but not limited to auto and truck repair garages, machine repair shops, and septic tank pumpers, appliance repair shops; twenty-five dollars;

(u) Restaurants; twenty-five dollars;

(v) Traveling salespersons; twenty-five dollars;

(w) Taverns and nightclubs; two hundred dollars;

(x) Renting or leasing of tangible personal property for use or consumption within this reservation including but not limited to the services of airplane crop dusting and helicopter

lifting; fifty dollars;

(y) Warehouse and cold storage operators, cold deck storage of logs, log sorting yards, and all other storage of products, goods, or fuels, whether for sale or distribution without sale; fifty dollars;

(6) Tax On Service and Other Business Activities. Upon every person engaging within this reservation in the business of service and other business activities as enumerated below; as to such persons the amount of the tax with respect to such business shall be as specified and if two or more employees are employed with respect to such business the amount of the tax specified shall be multiplied by the number of employees:

(a) Accountants; one hundred dollars;

(b) Aerial surveyors and map makers; one hundred dollars;

(c) Agents (excluding those named below); one hundred dollars;

(d) Ambulances (excluding volunteer services); one hundred dollars;

(e) Appraisers (excluding those named below); one hundred dollars;

(f) Architects; one hundred dollars;

(g) Assayers; one hundred dollars;

(h) Attorneys; one hundred dollars;

(i) Barbers; twenty-five dollars;

(j) Bail Bond Agencies; one hundred dollars;

(k) Beauty Shop Owners; twenty-five dollars;

(l) Bail or Debt Collection Agencies; three hundred dollars;

(m) Brokers (excluding those named below); one hundred dollars;

(n) Chiropractors; one hundred dollars;

(o) Community Television Antenna Owners; two hundred dollars;

(p) Court Reporters; fifty dollars;

(q) Dentists; one hundred dollars;

(r) Detectives; one hundred dollars;

(s) Employment Agents; fifty dollars;

(t) Engineers; one hundred dollars;

(u) Foresters; one hundred dollars;

(v) Funeral Directors; one hundred dollars;

(w) Garbage Collectors; fifty dollars;

(x) Insurance Agents and Brokers and Bond Agents; one hundred dollars;

(y) Insurance Adjustors; one hundred dollars;

(z) Janitors; twenty-five dollars;

(aa) Kennel Operators; fifty dollars;

(bb) Landscape Surveyors; one hundred dollars;

(cc) Land Architects; one hundred dollars;

(dd) Loan Agents; one hundred dollars;

(ee) Log and Lumber Sealers; one hundred dollars;

(ff) Physicians; one hundred dollars;

(gg) Real Estate Agents, Brokers, and Appraisers; three hundred dollars;

(hh) Stenographers; fifty dollars;

(ii) Timber cruisers; one hundred dollars;

(jj) Undertakers; one hundred dollars;

(kk) Veterinarians; one hundred dollars;

(ll) Rental or Lease of real property for 30 days or more; one hundred dollars;

(mm) All Others; twenty-five dollars;

(7) Deductions Enumerated. In computing tax measured by the base rate multiplied by two or more employees, there may be a deduction from the base rate as follows:

(a) The base rate may be reduced by one-half in computing tax measured by any employee who is at the time of employment an enrolled member of an Indian tribe;

(b) The following method may be used as an illustration:

$50.00 base rate
10 total employees
8 enrolled members of Indian tribes
$25.00 (1/2 base rate) X 8 = $200.00
$50.00 base rate X 2 = $100.00

$300.00 TOTAL TAX DUE

In the case of a public utility tax there may be deducted from the amount of the tax five percent for each employee who is at the time of employment an enrolled member of an Indian tribe, provided that the allowable deductions shall not exceed fifty percent of the amount of the tax.

(8) Exemptions. This title and the rules thereunder shall not apply to churches, schools, fraternal benefit societies, and bona fide non-profit organizations of a social, recreational, charitable, religious, educational or legal aid nature.

GENERAL ADMINISTRATION PROVISIONS

Rule 3.40

(1) Method to Determine Number of Employees. For the purpose of computing tax, the number of employees shall be the number of employees employed during one month of normal business operation. In the case of a seasonal business, the term "normal business operation" shall exclude any slow, peak, or off month.

(2) Time and Place of Sale.

(a) For the purpose of determining tax liability of persons selling tangible personal property, a sale takes place in this reservation when the goods sold are delivered to the buyer in this reservation, irrespective of whether title to the goods passes to the buyer at a point within or without this reservation.

(b) With respect to the charge made for performing services a sale takes place in this reservation when the services are performed herein.

(c) With respect to the charge made for leasing or renting tangible personal property, a sale takes place in this reservation when the property is used in this reservation by the lessee.

(3) Authorization To Issue Business Licenses and Collect Fees & Taxes.

The Clerk of the Quinault Department of Revenue is authorized to issue Business Licenses pursuant to Title 40 and these rules; and is authorized to collect the filing fees and taxes due hereunder.

(4) Revenues to be Deposited in the Quinault Tribal Revenue Fund.

The Clerk of the Quinault Department of Revenue, upon receipt of any payments of tax, penalty, interest, or fees collected hereunder shall deposit them to the credit of the Quinault Tribal Revenue Fund or such other fund as may be provided by law. A Quarterly report of the amount deposited to the Revenue Fund shall be made to the Business Committee.

(5) Tax-When Due.

All taxes imposed for the privilege of engaging in business under this title shall be due and payable prior to the commencement of the taxable business activity and the renewal tax shall be due and payable on or before January fifteenth (15th) of each succeeding year.

(6) Assessment of Tax by the Department of Revenue.

As to each person engaging in business, or making application to do business,

the Department of Revenue shall determine the tax from facts and information obtained from such persons and other reliable sources.

As soon as the Department of Revenue procures such facts and information as it is able to obtain on which to base the assessment of any tax payable by such person, it shall proceed to determine and assess against such person the tax due.

(7) Deficient and Delinquent Payments.

If upon examination of any returns or from other information obtained by the Department of Revenue it appears that a tax or penalty has been paid less than that properly due, the Department of Revenue shall assess against the taxpayer such additional amount found to be due. The Department of Revenue shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within twenty days from the date of notice, or within such further time as the Department may provide.

No assessment or correction of an assessment for additional taxes due may be made by the Department more than one

year after the close of the tax year, except (1) against a taxpayer who has not obtained a Business License as required by this title, (2) upon a showing of fraud or of misrepresentation of a material fact by a taxpayer, or (3) where a taxpayer has executed a written waiver of such a limitation.

(8) Petition for Reduction of Tax after Payment.

Any person, having paid any tax, or corrected assessment of any tax, may apply to the Department within one hundred and eighty (180) days after the close of the tax year, or from the date of notice of the additional amount of tax, by petition in writing for a correction of the amount paid, and a conference for examination and review of the tax liability, in which petition shall be set forth the reasons why the conference should be granted, and the amount in which the tax, interest, or penalty, should be refunded. The Department shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail thereof forthwith; if a conference is granted, the Department shall notify the

petitioner by mail of the time and place fixed therefor. After the hearing, the Department may make such determination as may appear to it just and lawful, and shall mail a copy of its determination to the petitioner.

(8) Every person engaging in more than one taxable business activity shall be taxed under the applicable rates with respect to each such business.